

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-01420 (SCC)

4 Case No. 08-13555 (SCC) (SIPA)

5 Case No. 09-14884 (SCC)

6 - - - - - x

7 In the Matter of:

8 LEHMAN BROTHERS HOLDINGS INC., et al.,

9 Debtors.

10 - - - - - x

11 In the Matter of:

12 LEHMAN BROTHERS INC.,

13 Debtors.

14 - - - - - x

15
16 U.S. Bankruptcy Court

17 1 Bowling Green

18 New York, New York

19
20 Wednesday, March 11, 2015

21 10:08 AM & 10:21 AM

22
23 B E F O R E :

24 THE HONORABLE SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 Hearing re: UNCONTESTED -- Motion Pursuant to Federal Rule
2 of Bankruptcy Procedure 9019 for Entry of an Order Approving
3 Settlement Agreement Between the LBI Trustee and Lehman Re
4 Ltd. [LBI ECF No. 11331]

5
6 Hearing re: UNCONTESTED -- Trustee's Motion for an Order
7 Authorizing the Abandonment of Certain Securities [LBI ECF
8 No. 11314]

9
10 Hearing re: CONTESTED -- Motion of the Plan Administrator in
11 Aid of Execution of the Plan to Establish a Bar Date for
12 Demands for Postpetition Interest Against Lehman Brothers
13 OTC Derivatives Inc. and Lehman Brothers Commercial
14 Corporation [ECF No. 48487]

15
16 Hearing re: CONTESTED -- Trustee's Two Hundred Thirty-Third
17 Omnibus Objection to General Creditor Claims (No Liability
18 Claims) [LBI ECF No. 8858]

19
20 Hearing re: CONTESTED -- Trustee's Two Hundred Sixty-Fourth
21 Omnibus Objection to No Liability Claims [LBI ECF No. 9736]

22
23 Hearing re: Doc 162 Motion of the Joint Provisional Liquidators
24 of Lehman Re LTD for Authorization and approval of the
25 Settlement between Lehman re Ltd and Lehman Brothers Inc.

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P R O C E E D I N G S

JUDGE CHAPMAN: How is everyone today?

MAN: Very well, thank you.

JUDGE CHAPMAN: Okay, I'm ready when you are.

MS. GRAGG: Good morning, Your Honor.

JUDGE CHAPMAN: Good morning.

MS. GRAGG: Meaghan Gragg of Hughes Hubbard & Reed
for the SIPA Trustee. I just wanted to give a brief update
on distributions before we got started today.

JUDGE CHAPMAN: Sure.

MS. GRAGG: I'm happy to report that, as of
yesterday, we distributed 95 percent, \$2 billion of the \$2.2
billion fund is now in the hand of Creditors, and we'll
continue to distribute as Creditors submit their tax related
paperwork. We're also continuing our efforts towards the
unwind of the--the wind-down of the estate. Since the last
hearing before Your Honor, we found our realization report,
which is of great interest to our regulators and Creditors.
Unless Your Honor has any questions I'll turn it over to
Michael Salzman--

JUDGE CHAPMAN: No, I would just--I would just
share with you that last week, I had the privilege of guest-
teaching at Judge Peck's class, which he teaches at the NYU
Stern School, an interesting experience for the students to
have, the first and the second Lehman Judge in the same

1 room, and I shared with Judge Peck the recent news regarding
2 distributions, and the general progress of these cases and,
3 suffice to say, it was very gratifying to him.

4 MS. GRAGG: Thank you, Your Honor. That's wonderful
5 news to hear. So--

6 JUDGE CHAPMAN: I'm ready.

7 MS. GRAGG: Okay, so we have four matters on the
8 LBI calendar today. The first two are the Lehman
9 resettlement, and the securities abandonment motion--

10 JUDGE CHAPMAN: Sure.

11 MS. GRAGG: --and then an LBHI matter will be
12 heard, and then we have two claims matters following that.

13 JUDGE CHAPMAN: All right, very good. Good morning.

14 MR. SALZMAN: Good morning, Your Honor. I'm Michael
15 Salzman and I, too, represent the SIPA Trustee in the LBI
16 Bankruptcy, and I'm here to present for the Trustee on the
17 motion to approve the Trustee's settlement with the
18 liquidators of Lehman Re Ltd.

19 JUDGE CHAPMAN: Okay.

20 MR. SALZMAN: This is the last substantial Lehman
21 affiliate claim in this liquidation, and so, to that extent,
22 it's a milestone in the case. I'm pleased to report that.
23 Lehman Re has its own motion pending today that's scheduled
24 for hearing to approve the same exact settlement in its
25 Chapter 15 case, and my understanding is that they will

1 present after I'm complete--

2 JUDGE CHAPMAN: Okay.

3 MR. SALZMAN: --so that the two companion motions
4 come one after the other. This present settlement has
5 already received approval in the Supreme Court of Bermuda on
6 the Lehman Re side, where Lehman Re has its main proceeding.
7 As noted, Lehman Re, if, likely, Lehman Brothers, Inc. who
8 is an affiliate and a member of the Lehman Group, and
9 there's no opposition to this motion--

10 JUDGE CHAPMAN: Okay.

11 MR. SALZMAN: I offered due notice. The motion
12 provides--the settlement provides that Lehman Re will
13 receive a non-priority general unsecured claim for \$125,
14 231,023. First, let me say that I can report that our
15 negotiations with Lehman Re, in my view at least, represent
16 a model of international cooperation in bankruptcy. There
17 was cooperation and civility throughout Lehman Re and its
18 professionals, which included Pricewaterhouse Coopers
19 Bermuda, the Ken (indiscernible) law firm, they used Black
20 Rock as a valuation expert on their side, we, in addition
21 to Hughes Hubbard employed Miller Buckfire and Deloitte to
22 help us. There was cooperation, there was arm's length
23 bargaining, but at the end of the day, the negotiation
24 really became a fact-based analysis and so we were able to
25 arrive at a number that was fair and equitable to both

1 sides.

2 Lehman Re's claim had two components. One was an
3 inter-company balance and the other involved a repurchase
4 agreement with respect to 25 securities. The inter-company
5 balance was never hotly contested as to what the amount was.
6 The books and records agreed, and that's the \$5 million and
7 odd change portion of the settlement.

8 JUDGE CHAPMAN: Right.

9 MR. SALZMAN: The repo claim, arose because LBI was
10 due to return 25 securities with a repurchase price of more
11 than \$273 million dollars. LBI defaulted by virtue of its
12 going into liquidation, and these securities were structured
13 debt mortgage-backed securities. Lehman Re originally made a
14 claim for almost \$190 million dollars with a respected
15 difference between the repurchased price that they were
16 supposed to receive and what they asserted the value was.
17 The challenge in our negotiation was to value them. It was
18 an unsettled market. The relevant date would have been
19 September 19, 2008, when LBI went into bankruptcy. That was
20 the default date, and so, there was a challenge to figure
21 out how to value the securities at that point.

22 There was, as I said before, arm's length
23 bargaining, each side used its own professionals, there was
24 some argument and analysis using transaction data for
25 comparable transactions, extrapolations from transactions

1 involving later dates, and back and forth with presentations
2 from experts as to how these valuations could be done, and
3 at the end of the day, we arrived at a compromise, such that
4 the original a hundred and approximately eighty-five million
5 dollars attributed to the claim by Lehman Re was reduced to
6 \$120 million dollars, and that's the basis for the
7 settlement.

8 The iridium factors call for approval of this
9 motion I submit. There's no reason to believe that a better
10 outcome could be achieved by litigation. We've already had,
11 in effect, a battle of the experts and got the benefit of
12 the opinions and analysis from all of them. Delay is not in
13 the interest of anyone here, and so--

14 JUDGE CHAPMAN: Did you mention--I might have
15 missed it, the Center Bridge claim and how that's connected?

16 MR. SALZMAN: Sure. I have not, and--

17 JUDGE CHAPMAN: Okay.

18 MR. SALZMAN: --I'm happy to do that. Center Bridge
19 is a Creditor of Lehman Re and its estate--

20 JUDGE CHAPMAN: Right.

21 MR. SALZMAN: --a principal one, and so--and it had
22 made a claim directly in our estate as well, involving some
23 of these securities and claims of--that potentially, someone
24 who had worked for Lehman Brothers Inc., or several people
25 might have been responsible for acting negligently or

1 improperly and in, with respect to some of these same
2 securities, and Center Bridge had purchased that claim. One
3 of the considerations in settling this is that Center
4 Bridge--it's a condition of this settlement that Center
5 Bridge will also release that claim, and we expect that to
6 happen shortly.

7 I should say that, while that's part of this, the
8 real analysis came down to what were these securities worth,
9 and--

10 JUDGE CHAPMAN: Okay.

11 MR. SALZMAN: --and that's the primary basis for
12 the settlement.

13 JUDGE CHAPMAN: All right. All right. Why don't I
14 ask if anyone else wishes to be heard with respect to the
15 motion pursuant to rule 9019 for entry of an order approving
16 the settlement agreement between the LBI Trustee and Lehman
17 Re Ltd.? All right, that being said, I'm convinced that each
18 of the iridium factors weighs in favor of approval of the
19 settlement agreement, which is very obviously the product of
20 extensive, thoughtful negotiations. The settlement is fair,
21 equitable and in the best interests of the estates of each
22 of the LBI and Lehman Re and I will enter an order of
23 agreement.

24 MR. SALZMAN: Thank you, Your Honor.

25 JUDGE CHAPMAN: All right? Thank you. All right, so

1 we'll move next to the abandonment motion.

2 MR. SALZMAN: I'm sorry, Your Honor, just for
3 clarification--

4 JUDGE CHAPMAN: Yes.

5 MR. SALZMAN: --the lawyers for Lehman Re are here
6 and want to make the motion in their case--

7 JUDGE CHAPMAN: Very good.

8 MR. SALZMAN: --so they can be heard next.

9 JUDGE CHAPMAN: Sure.

10 MR. SALZMAN: Okay.

11 JUDGE CHAPMAN: I was trying to be too efficient.

12 MR. KRONENBERG: Good morning, Your Honor.

13 THE COURT: Good morning.

14 MR. KRONENBERG: David Kronenberg of Calwalader,
15 Wickersham & Taft on behalf of the Joint Provisional
16 Liquidators of Lehman Re Limited. As noted by Mr. Salzman
17 Lehman Re is filed a parallel motion in its Chapter 15
18 proceeding for this Court's approval of the settlement. We
19 would note that Lehman Re has not received any objections to
20 its motion. Also as noted by Mr. Salzman the settlement has
21 already been approved by the Supreme Court of Bermuda in
22 which Lehman Re's (indiscernible) is pending. And the
23 Bermuda approval order is Exhibit 2 of the declaration of
24 Allison Tume in support of the motion. Miss Tume who is in
25 the courtroom today--she's sitting over there--is a director

1 of PriceWaterhouseCoopers and is one of the principle PWC
2 employees responsible for Lehman Re's liquidation. She has
3 been involved in Lehman Re's liquidation since 2011 and led
4 the negotiation's with LBI that culminated in the settlement
5 agreement. The settlement comprehensively resolves all
6 disputes between the parties, and as Mr. Salzman mentioned
7 it resolves two main issues. The intercompany claim and the
8 repo claim.

9 The intercompany claim was based on the Lehman
10 global close which we viewed as authoritative, and the bulk
11 of the negotiations was around the repo claim. And as Mr.
12 Salzman mentioned determining the value of these securities
13 was difficult because they included collateralized data
14 obligations, commercial mortgage bank securities and various
15 other types of asset-backed securities that are often not
16 traded in a liquid market. And often included slices of
17 dozens or even hundreds of other types of securities of
18 varying complexity. The parties began discussions in August
19 of 2013 and over a six month period from July 2014 to
20 January 2015 the parties engaged in extensive negotiations.
21 And as Mr. Salzman mentioned we retain Black Rock Financial
22 Management. It's just us and they retained (indiscernible).
23 And over time as more information was exchanged and
24 evaluation work by these firms was analyzed, the parties'
25 positions narrowed and it became clear that litigation on

1 the remaining issues would really be expensive, protracted
2 and uncertain. So the parties decided to compromise and the
3 claim together is worth \$125,231,023. And as you mentioned
4 before as part of this compromise center bridge, as part of
5 a global solution, agreed to withdraw its claim. They have
6 agreed to do that after they get court approval here and at
7 that point the agreement will become effective.

8 The compromise here really exemplified the best of
9 the bankruptcy process. Through opening regular
10 communication the parties representatives analyzed all
11 factions of legal issues and reached a resolution that's
12 fair to everybody. And Ms. Tume updated Lehman Re
13 (indiscernible) liquidators throughout the settlement
14 process and their decisions ultimately enter into the
15 settlement was fully informed, represents an appropriate
16 exercise of their duties under Bermuda law, a sound exercise
17 of the business judgment and is the best interests of Lehman
18 Re's creditors. The settlement if approved will also enable
19 Lehman Re to conclude its liquidation in a timely manner. So
20 (indiscernible) respectfully request for the motion to be
21 approved.

22 THE COURT: All right, so Miss Tume's declaration
23 is part of the record. Let me ask if anybody wishes to cross
24 examine Miss Tume? All right. Does anyone wish to be heard
25 with respect to the settlement of the approval of the

1 settlement agreement between the LBI Trustee and Lehman Re
2 in the Lehman Re case? All right then for the sake of the
3 record let me repeat what I said about seven minutes ago
4 which is that I believe that each of the iridium factors has
5 been satisfied and weighs in favor of approval of the
6 settlement which is obviously the product of extensive and
7 thoughtful negotiations. The settlement is fair and
8 equitable and in the best interests of the estate of Lehman
9 Re as well as LBI and I will approve it.

10 MR. KRONENBERG: Thank you Your Honor.

11 THE COURT: All right? Thank you very much.

12 MR. CHAMIE: Good morning, Your Honor. Ramsey Chamie of
13 Hughes Hubbard & Reed on behalf of the SIPA Trustee here to
14 present the Trustee's motion for an order authorizing the
15 abandonment of certain securities. This is another step in
16 our efforts to wind up and close the estate. We recognize
17 that abandoning securities is extraordinary relief and in
18 that regard extraordinary steps have been taken to that all
19 the securities maximize value for the estate's creditors.

20 The declarants are here today. The motion is
21 unopposed, (indiscernible) in the estate's largest creditor,
22 LBHI support the motion. Additionally, the Ad hoc group of
23 LBI creditors has filed a statement in support of the
24 motion. And professionals for both LBHI and the Ad hoc group
25 have also met at the securities and have been kept informed

1 throughout this process. Your Honor, this liquidation began
2 with more than 100,000 unique securities help for LBI and
3 its customers. We are now down to the last several hundred.
4 Over the course of the liquidation as the Court is aware the
5 Trustee has distributed \$106 billion dollars of value to
6 customers and more than \$5.9 billion dollars in case to
7 creditors. To generate the necessary cash for distributions
8 with the supervision of (indiscernible) the Trustee
9 implemented a strategy to liquidate all securities that were
10 not set aside for customers. In 2003 the Trustee retained
11 Black Rock Financial Management, Inc. which raise over \$7
12 billion dollars for the estate through security sales. Soon
13 thereafter, the Trustee retained the investment bank Miller
14 Buckfire to sell approximately 3,200 remaining liquid
15 securities through transparent and public auctions as well
16 as at market sales.

17 In total, Miller Buckfire liquidated more than
18 2,800 securities, raising \$437 million dollars for the LBI
19 estate. The 314 securities at issue, consist of non-
20 transferrable securities, which are registered to LBI, but
21 cannot be traded due to transfer restrictions. In many
22 cases, the issuing company no longer exists, and there is no
23 transfer agent. The same goes for the customer name
24 securities, which are physical certificates registered in
25 customer name as defined by SIPA. No one has requested these

1 certificates, nor can the Trustee sell them.

2 Abandoning these valueless securities will reduce-

3 -

4 JUDGE CHAPMAN: So, let me ask you to stop there

5 and, and--

6 MR. CHAMIE: Sure.

7 JUDGE CHAPMAN: --and tell me again how those folks

8 have been noticed and what efforts have been done to attempt

9 to get them to come in and claim their securities.

10 MR. CHAMIE: Well, at the outset of the

11 liquidation, pursuant to SIPA, when we had customer name

12 securities and anyone requested them, we would return them.

13 That's separate from the claim process. In addition, the

14 Trustee sent out over 900,000 claim packets to customers and

15 former customers who could file claims to request

16 securities. We've gone through that process. In addition, if

17 we had any customer name security where there was an address

18 listed on the security--

19 JUDGE CHAPMAN: Right, right.

20 MR. CHAMIE: --we would mail to that address. In

21 some cases, the securities came back to us. Many of the

22 customer name securities, I would say the vast majority,

23 are--were issued by companies that are now no longer in

24 existence, and the securities have been de-listed. My

25 understanding is that, in my cases, these are decades old

1 securities that customers may have actually abandoned with
2 Lehman Brothers, back in the 60s and 70s, and they've just
3 been staying in Lehman's vault since then.

4 JUDGE CHAPMAN: So, has there been some kind of
5 publication notice that--along the lines of, you know,
6 unclaimed distributions, abandoned property. Not trying to
7 make it more difficult--

8 MR. CHAMIE: Mm hmm.

9 JUDGE CHAPMAN: --but I've seen in this case, folks
10 show up very, very late in the game and then say, you know,
11 they didn't know and had they known, so I just want to be
12 satisfied that--I'm not suggesting that you haven't, but
13 that every effort has been made to put these folks on notice
14 that you have these pieces of paper that have their name on
15 them.

16 MR. CHAMIE: Right. That's one of the primary
17 purposes of this motion. We feel through the claim process,
18 as well as just efforts to return customer name securities,
19 we've made every reasonable effort to return to them. At
20 this point, we're confident that there's such little value
21 in these securities that any further effort would outweigh
22 the cost that that effort would entail, would exceed,
23 actually, the value of the securities.

24 JUDGE CHAPMAN: So, with respect to the ones that,
25 as you said, are pieces of paper in the Lehman vault, what's

1 going to happen to them?

2 MR. CHAMIE: We'll go through our custodian, which
3 is Bank of New York. They have procedures in place for
4 taking them, essentially, off the Trustee's books, which
5 will allow us to take them off our books and simplify our
6 remaining estate to reduce it to cash.

7 JUDGE CHAPMAN: Okay, and then if somebody turns
8 up, then what happens?

9 MR. CHAMIE: If someone did show up, the SEC, I
10 understand, has a process for lost and stolen securities
11 that they could avail themselves to, if that were the case.

12 JUDGE CHAPMAN: So they would have recourse and be
13 able to go through that process and obtain whatever value or
14 interest may be--may have been represented by those
15 securities?

16 MR. CHAMIE: Correct.

17 JUDGE CHAPMAN: Okay.

18 MR. CHAMIE: Um--

19 JUDGE CHAPMAN: I interrupted you, I'm sorry.

20 MR. CHAMIE: Oh. [LAUGHS] Well, abandoning the
21 securities for the reasons we just said would reduce the
22 administrative costs and we believe is an important step in
23 bringing the estate to a close, and for that reason, we seek
24 the Court's permission to abandon them--

25 JUDGE CHAPMAN: Okay.

1 MR. CHAMIE: --as set forth in the proposed order.

2 JUDGE CHAPMAN: All right. Does anyone else wish to
3 be heard with respect to the Trustee's motion for an order
4 authorizing the abandonment of the securities described? All
5 right, thank you very much for answering my questions. Go on
6 to the order.

7 MR. CHAMIE: Thank you, Your Honor.

8 JUDGE CHAPMAN: Thank you.

9 MR. CHAMIE: I believe we'll turn the proceeding
10 over to LBHI at this time.

11 JUDGE CHAPMAN: Yes, please do.

12 MR. CHAMIE: Thank you.

13 JUDGE CHAPMAN: Thank you. Good morning, Mr.
14 Miller.

15 MR. MILLER: Good morning, Your Honor. I'm Ralph
16 Miller from Weil, Gotshal & Manges here for the plan
17 administrator, Lehman Brothers Holdings, Inc., also called
18 LBHI. May it please the Court, this agenda item is the plan
19 administrator's motion in aid of execution of a plan to
20 establish a bar date for demands for post-petition interest
21 against Lehman Brothers OTC Derivatives, Inc., which I will
22 call LOTC or L-O-T-C, and Lehman Brothers Commercial
23 Corporation, which I will call LBCC. As the Court knows, the
24 estates of LOTC and LBCC are solvent, and the payment of
25 post-petition interest has already generated some litigation

1 in the form of an adversary proceeding, which was the
2 subject of a pre-trial conference. What'd I'd like--

3 JUDGE CHAPMAN: That's referring to Bania Brothers?

4 MR. MILLER: Yes, Your Honor, and sometimes called
5 Baupost because it's really the Baupost Group.

6 JUDGE CHAPMAN: Right.

7 MR. MILLER: What I'd like to do briefly, Your
8 Honor, is first, to outline the status of the pending
9 motion, second to explain why the plan administrator
10 believes the information required to be submitted by this
11 motion is appropriate and consistent with past practice, and
12 would contribute to orderly administration of the plan as a
13 whole, and finally, deal briefly with the so-called limited
14 objections to the motion, then the objectors will argue, and
15 I may have a response.

16 With regard to current status, I want to note for
17 the record that the original Plaintiffs in the adversary
18 proceeding I just mentioned were Bania Brothers, LLC,
19 Baupost Group Securities, LLC, and Wooderson and Partners,
20 LLC, which were collectively called the Baupost Group. The
21 Court will recall the plan administrator to file a motion to
22 dismiss, with regard to that adversary proceeding, and while
23 it was pending, the three Plaintiffs in the Baupost Group
24 filed an objection to this bar date motion, which has come
25 to be called the Baupost objection.

1 However, it was joined then by Bank of America
2 Credit Products and two affiliated Merrill Lynch entities.
3 It was also joined by Värde Investment Partners, LP and
4 Deutsche Bank Securities. As the Court knows, a resolution
5 was later reached between the Baupost Group, the plan
6 administrator and that included dismissal of the adversary
7 proceeding and withdrawal of the original objection filed by
8 the Baupost Group, but the Baupost objection lives on
9 because of the joinders, Your Honor. So, when I talk about
10 the Baupost objection, I'm really talking about the
11 objection that is now being presented by Bank of America
12 Credit Products and its affiliates, Värde Investment
13 Partners and Deutsche Bank Securities.

14 A little confusing, but I think we need to be
15 clear on the record about that.

16 JUDGE CHAPMAN: Sure.

17 MR. MILLER: The second objection was filed by SPCP
18 Group, LLC, as agent for two funds that start with the name
19 Silver Point. The SPCP Group identifies itself in the
20 objection as Silver Point, and so for convenience, I'd like
21 to call that the Silver Point objection.

22 JUDGE CHAPMAN: Okay.

23 MR. MILLER: A key point, Your Honor, is that there
24 are a total of four groups that are objecting, Bank of
25 America, including Merrill Lynch, Bar day, Deutsche Bank and

1 Silver Point, on behalf of seven separate entities, but the
2 plan administrator estimates that there are 270 other
3 entities with potential claim for post-petition interest
4 against LOTC or LBCC, who did not object and did not join
5 either of these objections. So it's important to understand
6 that more than 97 percent of the parties who would be
7 subject to this bar date motion, and the disclosures in it,
8 have not asserted any objection to the motion before the
9 Court, and have not requested any changes in the order.

10 Now, let me talk briefly about the relief that is
11 being requested. There is no objection, by the way, to the
12 establishment of a bar date.

13 JUDGE CHAPMAN: Right.

14 MR. MILLER: The only two objections are to
15 information to be submitted with the claim for a post-
16 petition interest, and there's also actually kind of an
17 interesting add-on for affirmative relief that I'll talk
18 about separately. As I will explain--

19 JUDGE CHAPMAN: Are you talking about the timeline?

20 MR. MILLER: No, actually, Your Honor, that motion
21 is not, I think, before the Court. I'm talking about these
22 requests for special access to information from the plan
23 administrator about inter-company, inter-Debtor claims,
24 which is--

25 JUDGE CHAPMAN: Okay.

1 MR. MILLER: --which I would consider bolt-on and
2 we believe is not appropriate for the Court--

3 JUDGE CHAPMAN: Okay.

4 MR. MILLER: --to hear today. But turning to the
5 basic bar date issue, the plan administrator is seeking
6 something that's really a subset of the initial disclosure
7 that Federal Rule 26 requires any civil litigant seeking
8 damage in a routine case in Federal Court to provide. As set
9 out in the paragraph in the proposed order on the bottom of
10 the second page, the plan administrator seeks four things,
11 two of which are really administrative. First, it seeks the
12 amount of interest being sought in US dollars, just a
13 number. Second, it seeks, quote, "The calculation of such
14 amount and the source or any rates used in the calculation,"
15 closed quote. And third, an upload of any documentation in
16 support. The first thing is just logistical contact
17 information.

18 Now, if you compare that with the initial
19 disclosure provision in Rule 26A(3), which is required for
20 every civil litigant, it's very similar. It's, quote, "A
21 computation of each category of damages claimed by the
22 disclosing party, who must also make available for
23 inspection and copying, as under Rule 34, the documents or
24 other evidentiary matter, unless privileged or protected
25 from disclosure, on which each computation is based,

1 including materials bearing on the nature and extent of
2 injuries suffered," close quote.

3 The proposal for submission of this information,
4 we believe, is not burdensome and it's not unusual. We're
5 just asking them to provide--

6 JUDGE CHAPMAN: But you could ask for it, without
7 the citation to the Federal Rules, couldn't you?

8 MR. MILLER: Of course, Your Honor. I'm just saying
9 that they're now going to argue to you, Your Honor, that
10 this is drastic and burdensome, and that they should not be
11 required to provide it, and all I'm saying, Your Honor, is,
12 this is what basically every civil litigant has to provide,
13 and I'm going to explain why.

14 JUDGE CHAPMAN: And what I'm saying is that, even
15 without citation to that--

16 MR. MILLER: Of course. Of course.

17 JUDGE CHAPMAN: --just within the context of this
18 case and what's gone before, and what is necessary for the
19 plan administrator to do its job--

20 MR. MILLER: Absolutely, Your Honor, Sections
21 105(a) and 142 of the Bankruptcy Code, and Section 14.13 of
22 the Plan, authorize this Court to do this, and this is a
23 simplified variant of requirements that Judge Peck
24 established with regard to derivatives claims, the so-called
25 derivatives questionnaires, and Paragraph 15 of the motion

1 contains citations to a number of bankruptcy cases with a
2 similar requirements have been--

3 JUDGE CHAPMAN: Just so I understand, with respect
4 to the original--the big bar date, proofs of claim were
5 required to be filed on the--filed with the claims agent,
6 right?

7 MR. MILLER: Yes, Your Honor.

8 JUDGE CHAPMAN: But not--but the derivatives
9 questionnaires were not?

10 MR. MILLER: That's correct, Your Honor.

11 JUDGE CHAPMAN: Okay.

12 MR. MILLER: The derivatives--and these--the
13 additional information here is really analogous to the
14 derivatives questionnaires, just--but it's--they're actually
15 much more limited.

16 JUDGE CHAPMAN: But it's much, much more limited,
17 correct?

18 MR. MILLER: Much more limited than the derivatives
19 questionnaires.

20 JUDGE CHAPMAN: Mr. Fail wants to say something.

21 MR. FAIL: Your Honor, can I just clarify for the
22 record, they were filed on a website that was hosted, I
23 believe, by the claims agent and the same mechanism and the
24 same website would be used for the proposed bar date here.

25 JUDGE CHAPMAN: For the Proofs of Claim, but not

1 the derivatives questionnaires.

2 MR. FAIL: The derivatives questionnaires were
3 uploaded electronically, but they were not accessible on the
4 public website where they claims docket is available.

5 JUDGE CHAPMAN: Okay. Thank you.

6 MR. MILLER: And the same would be true here of
7 this--this upload information, Your Honor.

8 JUDGE CHAPMAN: Okay. Okay.

9 MR. MILLER: Now, I want to turn for a minute to
10 the objections. There's a central theme for both objections,
11 and that is, that a routine derivatives transaction would
12 not normally require this information for demand for default
13 interest, but of course, the routine claim for default
14 interest in a derivatives contract is not in the context of
15 implementing bankruptcy plan, and it doesn't deal, as almost
16 all of these claims do, with assignments that occurred after
17 the Payor was in Chapter 11. So, for example, the standard
18 ISDA agreement does not contemplate it to the possibility of
19 the automatic stay, has an impact on an assignment, which is
20 an issue that the plan administrator has to deal with, nor
21 consider the possibility that there may be a release, which
22 impacts the outcome, and that's one of the things that has
23 to be considered.

24 And, these are all factors that the plan
25 administrator must consider as it deals with competing

1 Creditor interest in multiple liquidating estates. The plan
2 administrator must focus not only on a contractual
3 interpretation of Creditor rights, but also on outcomes
4 where Creditor recoveries reflect a fair approximation of
5 losses. And we believe that, for those reasons, the
6 citations to the Finance One case, which are going to be a
7 central part of the objection, we believe, are really not
8 applicable. Finance One was not a bankruptcy case.
9 Ironically, it involved another Lehman Debtor, Lehman
10 Brothers Special Financing. Outside the bankruptcy context,
11 the District Judge in that case listed, quote, "Bad faith,
12 broad, gross negligence, or contravention of public policy,"
13 close quote, as factors that might be used to attack a
14 certification of cost of funds.

15 I would suggest, for example, violating the
16 automatic stay might be an issue of public policy, Your
17 Honor. An English Court that recently considered the same
18 language, Sal Oppenheim case, which is cited, has also held
19 that a certification under and ISDA agreement maybe
20 attacked, quote, "if there is no evidence to support it,"
21 close quote. I should note that in the Finance One case, the
22 party who was seeking to rely on its certificate also
23 supported it with evidence. It produced a number of actual
24 loan agreements. So, I can provide a series of other
25 distinctions, if necessary, Your Honor, but I think that the

1 point here is that Finance One is not dealing with a
2 bankruptcy context.

3 I would also point out that, on this central
4 objection that's based on the ISDA agreement, the objectors
5 are trying to cut off an information flow from 270 other
6 parties, because they say they don't want to provide this
7 information themselves. That's not an appropriate
8 (indiscernible).

9 JUDGE CHAPMAN: Well, let me--let me try to--I
10 mean, there are very--a lot of aspects of this that are very
11 interesting, but can I understand--can you describe the pool
12 of funds from which these claims are going to be paid? It's
13 not limitless, right?

14 MR. MILLER: No, it's not limitless, Your Honor,
15 and you put your finger on a key point. There may or may not
16 be enough money in these two estates to pay all post-
17 petition interest claims. There are also either--

18 JUDGE CHAPMAN: Which, just for clarity's sake,
19 because one of the Objectors did raise this point, the
20 filing of the claim, or the institution of the bar date, is
21 not--is or is not intended by the plan administrator to cut
22 off the accrual of post-petition interest?

23 MR. MILLER: I don't think that issue has been
24 addressed at all in the bar date motion, Your Honor. I don't
25 think there's anything that says it's going to deal with

1 accrual of interest at all. So, I--

2 JUDGE CHAPMAN: Well, my--one of the Objectors
3 makes the point that they are entitled to post-petition
4 interest until they're paid their post-petition interest.

5 MR. MILLER: They argued that, yes, Your Honor.

6 JUDGE CHAPMAN: Pardon me?

7 MR. MILLER: They do argue that, yes, Your Honor.

8 JUDGE CHAPMAN: Okay.

9 MR. MILLER: I don't--I don't think that issue is
10 before the Court today one way or anoth--

11 JUDGE CHAPMAN: One way or--

12 MR. MILLER: One way or the other.

13 JUDGE CHAPMAN: One way or the other.

14 MR. MILLER: I mean--

15 JUDGE CHAPMAN: One way or the other, so the entry,
16 assuming every--assuming I get past all the other
17 objections, the entry of the bar date order in and of itself
18 is not going to cut off anyone's argument that they have a
19 right, until the moment before you actually give them the
20 money, that the interest clock is still ticking and that
21 they're entitled to that last penny. Right?

22 MR. MILLER: Right, Your Honor. I mean, I think
23 it's--it seems to clear to me at least, personally, and--and
24 I think I speak for the plan administrator on this that
25 nothing--nothing in this bar date order is going to change

1 the sufficiency hearing process, for example--

2 JUDGE CHAPMAN: Right.

3 MR. MILLER: --or the need for a specific
4 objection. If the parties submit their information, one of
5 the things that this will allow the plan administrator to do
6 is to group like issues together in omnibus objections, just
7 as we've done with others. So if there are a series of
8 claims that have a common objection, one of the things
9 that's possible is to bring the Court an objection with that
10 legal issue, and have a sufficiency hearing and you can
11 decide whether it's a legal issue, it's a factual issue or
12 what to do about it.

13 JUDGE CHAPMAN: Sure. Right.

14 MR. MILLER: And this is just--this is just the--

15 JUDGE CHAPMAN: It sounds like the old claims--it's
16 like a claims process.

17 MR. MILLER: It is a claims process.

18 JUDGE CHAPMAN: But it's also the case that, to the
19 extent that the relief that the Objectors seek were to be
20 granted, you wouldn't have visibility into what the 97 other
21 percent of the Claimants are putting before you, and
22 therefore, their claims could be exaggerated tenfold and
23 that would reduce the pro rata allocation that would be
24 available to everybody, including the Objectors.

25 MR. MILLER: Absolutely, Your Honor. I mean, with

1 the--the plan administrator has successfully settled 65,000
2 other claims using a process that was essentially the one
3 that Judge Peck established, that it's moved very smoothly.
4 It has settled two large, very sophisticated parties with
5 post-petition interest claims already using the existing
6 process. What it's trying to do is to continue to be able to
7 settle claims, and I'm--when we have the Objectors, I'll
8 explain. I think after they argue, I think I can explain why
9 I think that the unusual disclosures they're seeking would
10 make settlement very difficult, but that's really a
11 different part of the discussion right now.

12 All that the bar date motion seeks is the parties
13 to basically state, what are they asking for? It may well be
14 that the parties are asking for a small amount enough that
15 this becomes a relatively easy equation to solve. It may
16 well be that they were collectively asking for a lot more.
17 We do know that this is a--

18 JUDGE CHAPMAN: But they could, hypothetically, be
19 collectively asking for a sum in which you don't--wouldn't
20 even get to the issue of the entitlement of affiliates, non-
21 Debtor affiliates, controlled affiliates, however they're
22 defined, as to what their entitlement might be.

23 MR. MILLER: Well, I suppose, Your Honor,
24 technically, what they're asking for is separate from what's
25 going to be allowed, but it's certainly possible that the

1 ultimately allowed amounts for post-petition interest would
2 make that irrelevant, but it's also possible that it would
3 be relevant. And one of the things the plan administrator
4 has to consider, Your Honor, is that what we're dealing with
5 here is premium, over 100 percent payment. There are a lot--

6 JUDGE CHAPMAN: Oh, yeah. We're tal--we're--we have
7 a very class problem here.

8 MR. MILLER: Well, we do, Your Honor, and a lot of
9 other Debtors that the plan administrator is charged to--
10 it's charge under the plan is to maximize distributions on
11 allowed claims. That's the--that was what was voted on in
12 the plan.

13 JUDGE CHAPMAN: Right.

14 MR. MILLER: And that's the charge. There are a lot
15 of other Debtors where the Claimants are getting cents on
16 the dollar, but those are leaked through to this--these
17 claims and what the plan administrator has to deal with,
18 with inter-Debtor obligations--

19 JUDGE CHAPMAN: Sure.

20 MR. MILLER: --including derivatives transactions.
21 So there's a whole series of claims that interlock in a web
22 here. And the plan administrator has dealt with this before,
23 it's qualified to deal with it, and what these Claimants are
24 doing, Your Honor, which is not surprising, we don't blame
25 them, is they're trying to maximize their field position

1 with regard to their own individual claims.

2 JUDGE CHAPMAN: Sure.

3 MR. MILLER: And that's fine, but that's not what
4 the plan administrator is doing.

5 JUDGE CHAPMAN: Right, but what you're--I think
6 what you're saying is that, to draw the parallel to the
7 large claims process, if we had done what they're seeking to
8 do here, it would have been an endless free-for-all--

9 MR. MILLER: Absolutely, Your Honor.

10 JUDGE CHAPMAN: --with respect to other Creditors
11 attacking their fellow Creditors' claims--

12 MR. MILLER: Absolutely.

13 JUDGE CHAPMAN: --because as you said, because it's
14 cents on the dollar, it's more acute because of the more the
15 allowed claim is of one's neighbor, the lower the
16 distribution will be for you. So it's the same but
17 different.

18 MR. MILLER: Yes, it is, Your Honor, and the
19 problem--it's not surprising in this very low interest rate
20 environment that these sophisticated traders from the street
21 are trying to maximize yield. We understand that, Your
22 Honor, and it would help them maximize yield if they knew
23 what everybody else was asking for and they had a group
24 negotiation. So they're asking for a negotiating advantage,
25 essentially, which nobody has ever had in this plan before,

1 and which the plan doesn't call for, the law doesn't call
2 for, and which, we believe, is not in the public interest.

3 But that's essentially what's happening and again,
4 we don't blame them, but the plan administrator's job is not
5 to do that. Its job is to try to resolve these claims
6 fairly, and we believe that, if we try to resolve with 280
7 at one time, with everybody on the table and everybody
8 negotiating, it creates an endless circle problem, which
9 can't be solved. And we--so that's why this--the jumping
10 ahead to these proposals for disclosure that they have
11 added, what they really want is qualitatively different from
12 the bar date order. It really has very little to do with the
13 bar date order.

14 They're not saying the plan administrator needs to
15 upload to its own website the information about inter-
16 company claims. The plan administrator already knows that.
17 What they want is either, in the case of the Baupost
18 objection, public disclosure of all the rates that the plan
19 administrator is dealing with for the inter-company claims,
20 or interestingly, in the Silver Point objection, they want a
21 special access. If they sign a confidentiality agreement,
22 Silver Point wants to have access, so it'll have access that
23 people that don't sign the confidentiality agreement won't
24 have. That's never happened in this estate before. I'm not
25 sure it's happened in any estate, but it's a creative

1 proposal, but we think it's really quite unworkable.

2 And very interestingly, Your Honor, it was not
3 noticed to the parties--you can't really understand it
4 unless you really dissect the objections, so there are a lot
5 of other Debtors to this estate that are probably, the
6 collective estate, probably not aware of this request for
7 change. And we suggest simply, Your Honor, that this
8 disclosure mechanism that they're trying to graft onto an
9 objection, is not properly noticed. It would be a
10 fundamental change in plan administration, and the people
11 who voted on the plan didn't know about it.

12 JUDGE CHAPMAN: But to go back to something that
13 you said earlier, to focus on what is being asked for and
14 what is not being asked for, this is just a bar date motion.

15 MR. MILLER: Yes, Your Honor.

16 JUDGE CHAPMAN: It's just a bar date motion, so it
17 doesn't predict or preclude what might happen in the future,
18 as we've heard in many, many other cases in which, for
19 example, when we are trying to decide the appropriate
20 termination amount, where parties will argue, for want of a
21 better word, over, "Well, we want to see what Lehman did in
22 all of these other cases that we say are like that." That
23 might happen here, if you have a disagreement about a
24 demand, it may not, right?

25 MR. MILLER: Yes, Your Honor. Absolutely. I mean,

1 this--this is not supplanting the normal plan process for
2 processing claims. All this does, Your Honor, is it--

3 JUDGE CHAPMAN: And what about--

4 MR. MILLER: --an administrative mechanism to
5 conveniently get these 280 claims into the system with
6 comparable, minimal information so they can be processed
7 together.

8 JUDGE CHAPMAN: And what about the suggestion, I
9 don't--I certainly didn't see an order, but there's a
10 suggestion that entry of this order will enable the plan
11 administrator to disallow a claim without further ado, based
12 on insufficient information provided.

13 MR. MILLER: Your Honor, this doesn't have anything
14 to do with the disallowance of a claim. As I understand it,
15 the plan administrator can--is going to have to go through
16 the normal procedures to process these claims. I mean, this
17 is--

18 JUDGE CHAPMAN: Like a sufficiency hearing--

19 MR. MILLER: A sufficiency hearing--

20 JUDGE CHAPMAN: --like saying, I see what you
21 submitted--

22 MR. MILLER: --it could do--

23 JUDGE CHAPMAN: --I have questions, please submit
24 something more.

25 MR. MILLER: It could do a reduce and allow, Your

1 Honor, or the like, but the parties would have all the
2 rights they'd always have--

3 JUDGE CHAPMAN: Okay.

4 MR. MILLER: --under that mechanism and they'd have
5 the rights for a sufficiency hearing and it's--if the Court
6 decided in the sufficiency hearing that they were entitled
7 to go forward with discovery, they could go forward with
8 discovery. Whatever it is, it would be processed just like
9 any other claim, as I understand it. So--

10 JUDGE CHAPMAN: Is there a specific connector
11 between these claims and the pro--and the sufficiency
12 hearing process, or is that something that we would
13 specifically need to make clear in an order?

14 MR. MILLER: I don't think we need another
15 connector, Your Honor, do we? I mean--

16 JUDGE CHAPMAN: I just am not familiar enough with
17 the orders that are in existence that we file every day with
18 respect to sufficiency hearings and the like, so I would
19 just want to be able to make clear that the parties' rights
20 in that regard, so that there's no confusion. Mr. Fail?

21 MR. FAIL: Your Honor, the plan administrator
22 intends to prosecute and evaluate these claims consis--in--
23 with consistent orders, sufficiency hearing, prior to any
24 discovery, and any merits hearing. The ability to do
25 alternative dispute resolution to avoid burdening the Court

1 and judicial administration and waste of resources if things
2 could be settled and resolved outside of the Court.

3 JUDGE CHAPMAN: Okay. All right. I'm sorry, Mr.
4 Miller, for interrupting you a lot.

5 MR. MILLER: Your Honor, I think I've basically
6 finished what we believe is sort of the opening here,
7 subject to responding to the objections. The mission of the
8 plan administrator is, quote, "To maximize distribution to
9 holders of allowed claims," close quote. That's in Section
10 6.1(b)3. That's what the plan administrator is trying to do
11 here, and it believes that this bar date and the minimal
12 information required, is the next logical step. We would ask
13 the Court to approve it and we would ask the Court to not
14 take up issues here that we believe are not properly before
15 the Court. I would note, by the way, Silver Point has filed
16 a motion for some affirmative relief, including a setting a
17 deadline and a timetable. They voluntarily took that motion
18 off the calendar today, it's not on the calendar. That
19 motion will still be there. We can come back to that at some
20 future date.

21 JUDGE CHAPMAN: Okay.

22 MR. MILLER: People could file other affirmative
23 motions if they want to, and notice them as affirmative
24 motions affecting plan administration, but we don't think
25 those issues were properly noticed or properly in the

1 hearing today.

2 JUDGE CHAPMAN: All right. Thank you very much, Mr.
3 Miller.

4 MR. MILLER: Thank you, Your Honor.

5 JUDGE CHAPMAN: Good morning.

6 MR. O'NEAL: Good morning, Your Honor. Sean O' Neal
7 on behalf of Silver Point, Cleary Gottlieb.

8 JUDGE CHAPMAN: Okay.

9 MR. O'NEAL: Before I begin, I do want to say that
10 Silver Point supports the basic approach in the bar date
11 motion, and in fact, I think, as we noted in our papers, the
12 bar date motion was filed in large part in response to our
13 own motion seeking affirmative relief, and some of the
14 discussions we had been having.

15 JUDGE CHAPMAN: Well, I don't know that I'll agree
16 that it was in response to. It was filed after it, so--

17 MR. O'NEAL: Okay. And so, I think what I'd like to
18 focus on is--

19 JUDGE CHAPMAN: What's left of your objection--

20 MR. O'NEAL: Yeah, I think--

21 JUDGE CHAPMAN: --given what Mr. Miller has made
22 clear this morning?

23 MR. O'NEAL: I think the issues are substantially
24 more narrow than indicated even by Mr. Miller. We're not
25 going forward with the timetable request, that's--

1 JUDGE CHAPMAN: Okay.

2 MR. O'NEAL: --a subject of a different motion. We
3 had sought a reservation of rights with respect to our
4 arguments that the only documents relevant to the post-
5 petition interest claims are the ISDA and the post-petition
6 interest certification, and also a reservation of rights
7 with respect to the accrual of post-petition interest after
8 the bar date. We were not seeking to adjudicate that--those
9 issues today. We were just saying that those issues are not
10 being resolved today through the bar date order.

11 JUDGE CHAPMAN: Right, so you're seeking to reserve
12 the substantive issue--

13 MR. O'NEAL: That's correct.

14 JUDGE CHAPMAN: --which is basically the cost of
15 funds issue. I mean, just to be very--

16 MR. O'NEAL: That's correct.

17 JUDGE CHAPMAN: --just to really distill it down to
18 what it is, that--right?

19 MR. O'NEAL: That's correct.

20 JUDGE CHAPMAN: And the issue that I discussed with
21 Mr. Miller, which is the--how long the accrual continues,
22 assuming an entitlement at a particular rate?

23 MR. O'NEAL: That is correct, Your Honor, and we
24 are not objecting to the actual requirements for the
25 questionnaire.

1 JUDGE CHAPMAN: Okay.

2 MR. O'NEAL: We're more than happy to supply that
3 information. In fact, we already have, so we're not
4 objecting to that. We simply sought a reservation of rights
5 on those issues.

6 JUDGE CHAPMAN: Okay. So, Mr. Miller, does that--
7 any of that give you a problem?

8 MR. MILLER: Your Honor, we don't believe any of
9 those substantive issues were being resolved by the
10 establishing of the bar date. It's not in the order. I mean,
11 it's--there--it's a little bit of seeing goblins behind
12 trees.

13 JUDGE CHAPMAN: I agree, and this is the
14 fascinating thing with the reservation of rights. You're
15 reserving things that really weren't at all implicated by
16 the order, so I'm not inclined to put that in an order. It's
17 on the record, nobody is disagreeing with it. You have those
18 rights and any order that's entered is not going to
19 contravene those rights, either with respect to the issue of
20 what, under the ISDA you need to show--

21 MR. O'NEAL: Right.

22 JUDGE CHAPMAN: --in whose hands the
23 assignor/assignee issue, or the continuing accrual of the
24 interest beyond the bar date.

25 MR. O'NEAL: Thank you, Your Honor. We are more

1 than happy with that.

2 JUDGE CHAPMAN: All right?

3 MR. O'NEAL: So, that leaves us with the key issue
4 that we have, the one remaining issue, and I think it's--it
5 was not accurately described--

6 JUDGE CHAPMAN: Okay, this is the--

7 MR. O'NEAL: --so I--

8 JUDGE CHAPMAN: --this is the access via a
9 confidentiality--

10 MR. O'NEAL: Exactly, exactly, and so we--it's much
11 more narrow than as described on the record. What we have
12 asked is that Debtors and Debtor affiliates, just like other
13 Claimants, be required to file these questionnaires, and go
14 through the same process, and I'll tell you why. And in
15 addition, we have said, in our limited objection, that the
16 total aggregate amount of all post-petition interest claims,
17 should be disclosed publicly, just--not identifying, you
18 know, by claim or anything like that, but simply the total
19 aggregate amount, to give the Creditors some idea of the
20 total amount outstanding.

21 JUDGE CHAPMAN: Why?

22 MR. O'NEAL: Um--

23 JUDGE CHAPMAN: Why should this be different from
24 the way the claims process was conducted pre-petition? It's
25 the same relative math, if you will.

1 MR. O'NEAL: Right, and I'll get into that, and a
2 lot of this has to do with, in this situation, the majority
3 of claims are Debtor and Debtor-controlled claims, and so we
4 do have a concern about--

5 JUDGE CHAPMAN: Okay, you--just to be clear, you're
6 saying that--but I don't know whether that's true or not--

7 MR. O'NEAL: That's--

8 JUDGE CHAPMAN: --nor do I know whether or not it
9 matters. In other words, tomorrow, or the day after the bar
10 date, after you file your documentation, Mr. Miller might
11 call you and say, "Good news. We agree with your number,
12 where do we send the check?" and then you're done, right?

13 MR. O'NEAL: I think--yes, Your Honor. The publicly
14 available information we have suggests that the aggregate
15 amount of allowed claims held by Debtors and Debtor-
16 affiliates is approximately \$500 million. You know, it's a
17 little more or less, and then I think the Debtor's papers
18 have said the total amount of claims is approximately a
19 billion, against LOTC. So I think that's how we come to
20 that--the large--

21 JUDGE CHAPMAN: Okay.

22 MR. O'NEAL: --percentage of the claims against
23 LOTC are by Debtors and Debtor affiliates. And so our focus
24 here, particularly on the ability to review the Debtor and
25 Debtor-controlled affiliate claims is the fact that the plan

1 administrator has an inherent divided loyalty here. It's not
2 a nefarious conspiracy by any measure, it's just that the
3 plan administrator has a fiduciary duty to maximize claims
4 of its own, and to maximize claims of the LBHI estate--

5 JUDGE CHAPMAN: But that's when the argument--this
6 is always fascinating to me because you say "of its own".
7 The plan administrator has an overarching duty to maximize
8 value for each and every and all Creditors. And--

9 MR. O'NEAL: That's good.

10 JUDGE CHAPMAN: --that's been happening for many,
11 many years and will continue to happen. There is nothing
12 different about this situation, other than the Claimants are
13 in the enviable position of getting monies, post-petition
14 interest, beyond the face amounts of their claim. So it's
15 the same thing, and in addition, as I discussed with Mr.
16 Miller, and I am listening to the numbers that you're giving
17 me--

18 MR. O'NEAL: Sure.

19 JUDGE CHAPMAN: --at this moment, there's no
20 record, there's nothing that suggests to me that the
21 consideration and allowance of your claim, Silver Point's
22 claims for post-petition interest, necessarily will be
23 impacted by the Debtor claims. This is a bar date motion, so
24 at some later point--

25 MR. O'NEAL: Right.

1 JUDGE CHAPMAN: --at some later point, if and when
2 that ever became an issue, we might have a conversation
3 about it. But there's--nothing is served right now by going
4 down the route that you're suggesting. In the first
5 instance, the plan administrator needs to understand what
6 all these claims are. Many of them have traded, some of them
7 have not, I don't know how many of the ones that aren't here
8 today have not traded, and then we will be able to figure
9 out whether this is something that's worth talking about.

10 MR. O'NEAL: And Your Honor, we do agree that the
11 first step is for the plan administrator to--

12 JUDGE CHAPMAN: Okay.

13 MR. O'NEAL: --understand all the claims--

14 JUDGE CHAPMAN: Right.

15 MR. O'NEAL: --and that's why we say that the
16 Debtors and the Debtor-controlled affiliates should also be
17 required to file the questionnaires, so that the plan
18 administrator has before it, the total quantum of post-
19 petition interest claims. So we're not--we're saying that,
20 exactly as you say, which is that the plan administrator
21 needs to have before him, the entire amount of the
22 outstanding claims, and that includes the Debtor and Debtor-
23 controlled claims, because in this situation particularly,
24 that it represents the majority or near-majority of the
25 outstanding--

1 JUDGE CHAPMAN: You're putting the cart before the
2 horse, because after we go through this process, which
3 again, the timing of it, apropos of Silver Point's now
4 withdrawn--

5 MR. O'NEAL: Sure.

6 JUDGE CHAPMAN: --motion or adjourned motion, the
7 timing of it is not at issue today. We have to get started,
8 you have to walk before you can run. If, at a certain point,
9 there were to be a disposition, and the disposition includes
10 the words, "there's not enough money to go around because
11 the claims of the Debtor affiliates swamp, dwarf, et
12 cetera," then we can have a conversation around that. This
13 is, and always has been, always will be, a transparent
14 process. No doubt about it. But right now, it's a bar date
15 motion--

16 MR. O'NEAL: Right.

17 JUDGE CHAPMAN: --that's asking for third parties
18 to file the most basic, simple information so the plan
19 administrator can get started.

20 MR. O'NEAL: Yes.

21 JUDGE CHAPMAN: What happens next in step five,
22 six, seven, eight through ten, we'll get to when we get to
23 it.

24 MR. O'NEAL: Okay, and what we're saying is that
25 step one should include a requirement for the Debtors and

1 Debtor-controlled affiliates to file a questionnaire.

2 JUDGE CHAPMAN: Okay, I hear you.

3 MR. O'NEAL: Yeah, and so--and really, what we're
4 think--what we believe here is that, you know, is like I
5 say, it's not nefarious. The plan administrator has
6 fiduciary duties to all the Creditors, and so we're trying
7 to add a little transparency to the process, and I think our
8 suggestion that the questionnaires be made available to LOTC
9 Creditors that sign confidentiality agreements, is only with
10 respect to the Debtor and Debtor-controlled affiliate
11 claims. We're not looking to seek--to see other claims,
12 claims of other third parties. The idea is we wanted to be
13 able to see the claims of the Debtors and the Debtor-
14 controlled parties as a measure of transparency, and as a
15 means to audit and kind of check the natural divided
16 loyalties that the plan administrator faces in this
17 situation.

18 JUDGE CHAPMAN: Okay, thank you.

19 MR. O'NEAL: Thank you.

20 JUDGE CHAPMAN: All right, Mr. Miller, if you're
21 keeping track of things, to respond to that would be one of
22 them, okay?

23 MR. MILLER: Thank you, Your Honor.

24 MR. ANKER: Good morning, Your Honor.

25 JUDGE CHAPMAN: Good morning, how are you?

1 MR. ANKER: How are you? Philip Anker, for the
2 record--

3 JUDGE CHAPMAN: Good to see you, Mr. Anker.

4 MR. ANKER: --Wilmer Cutler Pickering Hale and
5 Dorr. I'm going to try to be very brief. I think--

6 JUDGE CHAPMAN: You always say that.

7 MR. ANKER: What?

8 JUDGE CHAPMAN: You always say that.

9 MR. ANKER: I always say that and I rarely, rarely
10 stick to my promise, but I will try today. Your Honor, our
11 issues are very concrete and they are narrow, and I think
12 the easiest way for me to walk you through them is, we have
13 a black line of the order, may I--and I actually have given
14 it already to the--

15 JUDGE CHAPMAN: Okay.

16 MR. ANKER: --Weil Gotshal but I'll be happy to
17 give it to them again.

18 JUDGE CHAPMAN: I don't have it yet, do I?

19 MR. ANKER: No, I'm going to hand it up to you
20 right now.

21 JUDGE CHAPMAN: Okay. (Indiscernible) May I
22 approach, Your Honor?

23 JUDGE CHAPMAN: Sure.

24 MR. ANKER: Your Honor, fundamentally, all we're
25 trying to do with our markup, with one exception, is to

1 implement precisely what I understand the substantive
2 discussion to be today, so that there is no mischief. The
3 one substantive difference is, and it's reflected on page
4 two of the markup, yesterday--I'm sorry, it may have been
5 two days ago--the Debtors filed their reply and suggested a
6 new date for the bar date, which would be April 13, which is
7 literally a month from today. It seems to us, given the
8 delay, we want to get this done too, 60 days for a bar date
9 is actually pretty quick, and we would therefore propose
10 that the bar date be the middle of May rather than literally
11 30 days from now. That, I think, should not be a terribly
12 controversial proposition.

13 Unless Your Honor has questions, I'm going to move
14 on. We agree with you, we need to have a date and get claims
15 in, and then that is not the substance. That is the
16 beginning of a process, and what we were concerned about is
17 that the way the order was written, and on the black line,
18 Your Honor, this is on page 3, there was a decretal
19 paragraph that said, "Order that any non-Debtor, non-
20 controlled affiliate," we haven't changed that, "that does
21 not timely assert a demand for post-petition interest, as
22 set forth above, shall be deemed to have waived any right,"
23 and we have the following concrete concerns. Let us--

24 JUDGE CHAPMAN: So that's the--that's the question
25 I asked Mr. Miller.

1 MR. ANKER: That's right, and--

2 JUDGE CHAPMAN: Right?

3 MR. ANKER: --and frankly, Your Honor, everything
4 we have thereafter simply implements that. It says--

5 JUDGE CHAPMAN: But you're skipping over the big
6 one, Mr. Anker.

7 MR. ANKER: The certification?

8 JUDGE CHAPMAN: Look--yes.

9 MR. ANKER: Your Honor, we're willing to provide a
10 calculation. I mean, let me tell you what--let me tell you
11 what we were--

12 JUDGE CHAPMAN: You're still skipping over the big
13 one. The source.

14 MR. ANKER: We're happy to provide the source, Your
15 Honor. Let me be clear on the concern. Let me try to be
16 very, very concrete, and I either would ask that we have an
17 order, which would be my preference, or representation on
18 the record. Take the issue of whose cost of funds matters. I
19 am representing a Transferee. Let us assume hypothetically
20 that I put in, or my client puts in, claims where it says it
21 is its cost of funds that matters. Mr. Miller says, "No,
22 it's not." Let's assume Your Honor adjudicates that no it's
23 not. It's the original Transferee.

24 JUDGE CHAPMAN: Sure.

25 MR. ANKER: What I want, then--

1 JUDGE CHAPMAN: The original Transferor.

2 MR. ANKER: The original Transferor, my apology.

3 JUDGE CHAPMAN: Okay.

4 MR. ANKER: What I want, then, is the ability to
5 say, "Okay, now I'll submit the original Transferor's cost
6 of funds." I don't want the fact that, by May 13, if we go--
7 I'm sorry, May 15, that I haven't put in that information,
8 that's a gotcha, that there's some substantive effect of
9 this order that says, if the information initially is
10 inadequate, based on adjudication and a rule of law that
11 Your Honor hasn't heard, that it's game, point, set, match,
12 over. That's a gotcha, and it's wrong.

13 JUDGE CHAPMAN: Okay, but let me--but--okay. You
14 say that's a gotcha, but let me give you a, "Really? Am I
15 going to do this twice?" In other words, you want to take a
16 shot at the Transferee rate being the right rate, and then
17 you want to say, you'll come to me, I'll either say yes or
18 no, and then you want to say, "Okay, I want to start over
19 now," and that seems to me to be--I don't want to abridge
20 your rights. It's never--should be a game of gotcha, but on
21 the other hand, why should I have to do it twice? Why should
22 there be a litigation roll of the dice, and then you say,
23 you know, as parties have said to me lately, "Oh, having
24 heard the Court, we're now going to take the opposite
25 position."

1 MR. ANKER: Your Honor, we're not taking the
2 opposite position. We're providing information. The way the
3 claim allowance process works and the way our order would
4 work--let me focus you on the remaining provisions. If you
5 turn to the bottom of page 3, we would say, if the plan
6 administrator reasonably believes that additional
7 information is required, it lets us know and we have a
8 meeting and confer, and it can then, if you turn to page 4,
9 put in an object and go to Court, and if then, the Court
10 determines that additional information is required, we can
11 seek to provide it. I simply don't want a gotcha. I want to
12 go to where Your Honor started today. This is a bar date,
13 not a substantive determination of rights. The way--

14 JUDGE CHAPMAN: But then--so let's focus on that,
15 and I apologize for interrupting you so much, but this is
16 difficult so I'm trying to keep up with all of you. So, why
17 wouldn't it be the--similar to, you submit a Proof of Claim,
18 right, and then the rules are, you can amend the Proof of
19 Claim after the bar date if it relates back. In essence,
20 what you're saying is, "I'm going to put in a Proof of
21 Claim, and then if it turns out that that's not the right
22 Proof of Claim, I'm going to put in a different Proof of
23 Claim based on a different agreement." And I--

24 MR. ANKER: No, Your Honor, I'm not. I think the
25 amendment is a perfectly good example. It is going to be a

1 claim. I think that your statement is absolutely both right
2 and acceptable. If we fail to put in a claim, if we say, for
3 example, "We are not entitled to post-petition interest
4 pursuant to ISDA Agreement No. 442," we can't later put in a
5 claim based on ISDA Agreement 442. But if Your Honor
6 adjudicates later that, at--we put in a timely claim as to
7 442, if Your Honor reaches an adjudication or Your Honor
8 says information is inadequate, I want an opportunity to
9 provide more information. It will absolutely have to relate
10 back--

11 JUDGE CHAPMAN: Meaning that if you wanted--if the
12 first go around, your certification or your source is cost
13 of funds of the Assignee, and that gets turned back, then
14 you want to come back and submit cost of funds of the
15 Assignor.

16 MR. ANKER: Right, Your Honor, because I don't know
17 what all of their costs of funds are for one thing. It's
18 going to be a timely, difficult process for me to find that
19 out now. There's been no adjudication on that question. I
20 simply don't want a gotcha, and let me be candid with Your
21 Honor. My hope, and the way we've drafted this order, is
22 that I'm never going to have this issue in front of you
23 because we will reach resolution with the Debtor. That's my
24 goal, and that goes to the last thing that we've done in
25 this order, which is different from the suggestion of Silver

1 Point. If you look at the very last decretal paragraph,
2 which suggests that - and again, Your Honor, I will take
3 representation on the record but I think an order is better
4 - we simply want to reserve the right and not have this
5 order in any way, shape or form be quoted back to us saying
6 we can't seek it, but if we can't reach a resolution, and we
7 believe we're entitled in that context to get the Debtor's--
8 what they've asserted as their own cost--their own interest
9 rates, we can seek it in discovery and they can object. And
10 that's all this says.

11 JUDGE CHAPMAN: Say that again? That--

12 MR. ANKER: Your Honor, imagine--we are not asking,
13 unlike Silver Point, at this point in time that Your Honor
14 require that there be disclosure to us, of what the Debtor-
15 controlled affiliates are seeking by way of post-petition
16 interest. All we are seeking, because this order says,
17 "Debtor-controlled affiliates need not provide that
18 information," is language that be--is clear, that later, if
19 we do have to litigate, and we take position, how can you
20 tell us 8 percent or 20 percent or 15 percent or whatever
21 the number is, is inappropriate when you yourself are
22 seeking that same percentage, that we can serve a discovery
23 request on them in connection with a contested matter, over
24 the allowance of our claim, they can object, and Your Honor,
25 if we can't reach adjudi--agreement, we'll ultimately reach

1 resolution.

2 I'm happy to take that on the record rather than
3 an order.

4 JUDGE CHAPMAN: Okay.

5 MR. ANKER: I'm trying to save you--

6 JUDGE CHAPMAN: But I'm not--but then we get into--
7 then we get into your coming back later and saying that I
8 said that you were entitled to that.

9 MR. ANKER: No, Your Honor, I'm not going to say
10 that. Look at the lang--I mean, Your Honor, if you--

11 JUDGE CHAPMAN: Well, the problem is that, I'm not
12 going to negotiate the language of a bar order that, if you
13 add the black line, if you look at the black line language,
14 it doubles the language in the order. So I'm not going to do
15 that. It's not fair, it's not appropriate, so I'm not going
16 to do that. So if you want to, as we continue to go through
17 this, if there are things or there is an opportunity where
18 you can talk to Mr. Miller and get some tweaks, tweaks to
19 the order that would satisfy some of your concerns, I'll
20 entertain that, but I'm not going to--

21 MR. ANKER: Okay.

22 JUDGE CHAPMAN: I'm not going to insert myself into
23 the drafting process of the bar order and again, I'm most
24 focused on B, and B seems to me to go to the heart of it,
25 which is to gut the primary piece of information that the

1 plan administrator wants. We've already covered the fact
2 that this is not intended to be a device that knocks you out
3 of the box because you haven't provided enough information.
4 I'm troubled by the notion that we could have a complete do-
5 over after going down the path of, and I'm using very, very
6 shorthand here, Assignee cost of funds versus--and then have
7 a do-over and it's Assignor.

8 MR. ANKER: Your Honor, we don't--let me try, and
9 I'm going to try to--I'm going to try to be pragmatic and
10 address your concerns.

11 JUDGE CHAPMAN: Okay.

12 MR. ANKER: First, I would ask that the bar date
13 provide for claims to be filed by May 15, not by April 13.
14 Second--

15 JUDGE CHAPMAN: I'm inclined--I'm inclined to agree
16 with you on that.

17 MR. ANKER: Yeah. Thank you, Your Honor. Second, I-
18 -

19 JUDGE CHAPMAN: Against the backdrop, of course,
20 that Silver Point wants things to go more quickly.

21 MR. ANKER: I understand. We're not--there isn't--

22 JUDGE CHAPMAN: Okay.

23 MR. ANKER: --(indiscernible) on every issue on
24 this side of the table.

25 JUDGE CHAPMAN: Yes, Mr. Fail?

1 MR. FAIL: Your Honor, may I just request
2 clarification as for a bar date, who's the only one that's
3 requested it. I've--no other parties--unless any other
4 parties here, and wants and--the gentlemen raising their
5 hands, their clients--

6 JUDGE CHAPMAN: Let's keep going. I said I'm
7 inclined, okay? Because I want to hear from Mr. Miller again
8 when everyone's had--

9 MR. ANKER: Your Honor, on the third issue, which
10 is simply reserving our rights to seek discovery, I simply
11 want to take a representation on the record that nothing in
12 this order is intended to prejudice our ability to seek that
13 discovery and of course, the Debtor's ability to object to
14 it, but the substance of this order will not govern that
15 question.

16 JUDGE CHAPMAN: It's just a bar order. It's just a
17 bar order that sets a date--

18 MR. ANKER: Okay.

19 JUDGE CHAPMAN: --and says what you have to file.
20 That's all it is.

21 MR. ANKER: And then my--my tweak on the middle
22 point is, we will provide the source of funds, we simply ask
23 that language be added to make it clear that, if information
24 is deemed to be inadequate, there will be an opportunity to
25 amend, as in accordance with and no greater but no less than

1 the normal amendment process under the Federal rules, and
2 with respect to claims generally. We simply don't want a
3 gotcha, and Your Honor has said, there shouldn't be a
4 gotcha.

5 JUDGE CHAPMAN: Okay. Okay.

6 MR. ANKER: Thank you, Your Honor.

7 JUDGE CHAPMAN: Thank you. Anyone else from the
8 Objectors?

9 MR. DORCHAK: Good morning, Your Honor.

10 JUDGE CHAPMAN: Good morning.

11 MR. DORCHAK: Just (indiscernible) Josh Dorchak--

12 JUDGE CHAPMAN: How are you, Mr. Dorchak?

13 MR. DORCHAK: Morgan Lewis. Good, thank you. On
14 behalf of Deutsche Bank Securities. Not to repeat, I--from
15 the assurances we got today, from Deutsche Bank's position,
16 we've got a lot of the comfort that we--

17 JUDGE CHAPMAN: Okay.

18 MR. DORCHAK: --were looking for. I think there was
19 some mischaracterization, but most of the issues that we may
20 end up fighting about, we can fight about later, and that
21 was really what we wanted to do, to defer those substantive
22 disputes and not get caught up in the gotchas.

23 JUDGE CHAPMAN: Okay, thank you.

24 MR. MILLER: Okay, Your Honor, let me see if I can
25 do this in some sort of coherent order, since there's a lot.

1 JUDGE CHAPMAN: All right, so the first point on my
2 list was the, "Why shouldn't this apply to the Debtor-
3 related entities?"

4 MR. MILLER: Yes, Your Honor. Well, I guess the
5 first answer to that is, the plan administrator already
6 knows the facts about the Debtor entities. What this order
7 does is to give the plan administrator information. Making
8 the plan administrator submit through the website is a
9 meaningless exercise and in fact, in the derivative's
10 questionnaires, for example, all the Debtor affiliates were
11 excluded. So that's not really what they're asking for. What
12 they're asking for is not that it apply to the plan
13 administrator, which it already does and since--the plan
14 administrator would have the information, they're asking for
15 a disclosure mechanism for the plan administrator's claims,
16 and that creates exactly the same problem that you mentioned
17 which is, you then get, essentially, a circular negotiation,
18 because if that disclosure goes to everybody, then it makes
19 it very difficult to deal with anything.

20 I want to make it clear, Your Honor. This whole
21 conflict of interest and divided interest thing, there are
22 no retained earnings in this estate. There is no shareholder
23 versus--

24 JUDGE CHAPMAN: Right. As I like to say, there is
25 no Lehman.

1 MR. MILLER: That's right.

2 JUDGE CHAPMAN: There are only the stakeholders.

3 MR. MILLER: That's right, Your Honor. And the--
4 it's all about Creditors.

5 JUDGE CHAPMAN: Right.

6 MR. MILLER: It's not about these people keeping
7 something, and the governance of the estate, the
8 administration of plan, it's described in a footnote at the
9 end of our reply, is set up through a Board of Directors
10 that was selected in an approved process under the plan.
11 There are certain disclosures that were approved in the
12 plan. What they're really trying to do is to modify the plan
13 and those disclosures, and graft on something that has not
14 been approved and frankly, it's to the detriment of other
15 Creditors and other estates, for them to have this special
16 visibility into a process that has not been present for
17 65,000 other claims that have been settled, and two large
18 post-petition interest claims that have been settled.
19 Because basically, what they're trying to do is to say, "We
20 don't want to--we want to see all there is so we can make
21 sure we ask for everything we could possibly ever get,
22 instead of just what we're entitled to," and that's really
23 what this is getting down to.

24 And we believe that the point is, Your Honor, they
25 should ask for what they're entitled to, and it will be

1 processed like all the other claims have been processed.

2 JUDGE CHAPMAN: Well, and I--and again, if you get
3 to the extreme hypothetical of, we establish the bar date,
4 all the claims come in, or the claims come in that there
5 are, and then the response from the plan administrator is,
6 "Thank you for your claims. As it turns out, you're each
7 only entitled to 2 cents of interest, and that's because the
8 claims of the Debtor affiliates are so large," we might have
9 a conversation at some point around that point. But we are
10 many, many, many steps away from that possibility, correct?

11 MR. MILLER: We believe so, yes, Your Honor. We
12 think--frankly, in this very low interest rate environment,
13 that if we get numbers that we expect we should get, then
14 this is not going to be much of a problem. We don't know the
15 outcome for sure, but I would add that Silver Point, to take
16 an example, who is making this point, Your Honor, has asked
17 for twice the rate of the original Assignor, who filed its
18 rate earlier with Lehman and now wants twice that rate.
19 Well, you know, if everybody asks for twice the rate of the
20 Assignor, we've got a different situation. But we don't
21 think that's going to happen with everybody, but we don't
22 know. that's what we'll know later.

23 JUDGE CHAPMAN: Okay.

24 MR. MILLER: This is all premature, Your Honor--

25 JUDGE CHAPMAN: Okay.

1 MR. MILLER: --and their effort to get
2 unprecedented disclosure of the plan administrator, which is
3 inconsistent with the disclosure provisions in the plan, and
4 was not noticed, it's just something that we think should
5 not be resolved today. If they want to do discovery at some
6 point, obviously, you know, discovery is one of those issues
7 that is already governed by mechanisms and procedures and
8 we'll deal with discovery when we deal with discovery.

9 JUDGE CHAPMAN: Okay.

10 MR. MILLER: This is not a discovery motion.

11 JUDGE CHAPMAN: All right.

12 MR. MILLER: The issue of the timing, Your Honor,
13 270 of the parties who have post-petition interest claims
14 did not have a problem with the original bar date. We have
15 proposed to extend it to April 13th. We'd really like to get
16 those claims and start processing them. If the--if there's
17 a request for these parties to have an extension of time, I
18 think we have authority to give them an extension of time,
19 and we'll do that.

20 JUDGE CHAPMAN: That was my next--that would have
21 been my next question.

22 MR. MILLER: Yes, Your Honor, but we don't think
23 that everybody needs an extension of time. We'd like to get
24 working on the other 270 in the meantime, because we do
25 agree, frankly, with the Silver Point goal of doing this as

1 rapidly as possible. We're trying--you know, time is money
2 here.

3 JUDGE CHAPMAN: Okay.

4 MR. MILLER: The longer it takes to administer an
5 estate, the more it costs, so--

6 JUDGE CHAPMAN: All right, well that's a surgically
7 precise solution to that issue. Okay.

8 MR. MILLER: So we think that that takes care of
9 that. Now, with regard to this issue about what rates they
10 provide, Your Honor, frankly, everybody who submits a claim
11 has to decide whether they're submitting the claim based on
12 one calculation, alternative calculations or whatever, and
13 if they decide to submit something and want to amend it,
14 they know the rules and they can figure out whether they can
15 amend it. We think, frankly, what they should do, if they
16 know the Assignor's rate and the Assignee's rate, we'd like
17 for people to give us both, because--

18 JUDGE CHAPMAN: Well, that's where I was going with
19 that.

20 MR. MILLER: Of course, and--

21 JUDGE CHAPMAN: So--

22 MR. MILLER: --and that also allows us, Your Honor,
23 to deal with the stay issue. I mean, as we've said, there is
24 a very significant legal issue. We're not asking the Court
25 to rule on it now, but the plan administrator has flagged

1 it, that if the Assignee rate is materially higher than the
2 Assignor rate--

3 JUDGE CHAPMAN: Right.

4 MR. MILLER: --then there's a problem if, whether
5 the assignment violated the automatic stay such that that's
6 not applicable. You don't know the Assignor rate, you don't
7 know it. If somebody gives us the Assignor rate and says,
8 "Well, Assignor rate is 2 percent, we however, as an
9 Assignee think our rate is 1.8 percent," we don't have to
10 worry about that. We'll go down and say, "Okay, it's 1.8
11 percent. That seems pretty close to LIBOR plus one, we're
12 pretty happy, let's move along." So these--

13 JUDGE CHAPMAN: So are you--is it your view that,
14 if they--keeping with your language and not Mr. Anker's
15 language, providing a calculation--providing the calculation
16 of such amount, and the source for any rates used in the
17 calculation, that's your language.

18 MR. MILLER: That's our language, Your Honor. They
19 give us the rate and they give us the source.

20 JUDGE CHAPMAN: So, if they give you the rate and
21 they give you the source and those both relate to the
22 Assignee's documents, right, and then, hypothetically, you
23 prevail and say, "That's not right," without knowing what
24 the Assignor is, is it your view that they are done?

25 MR. MILLER: Well, not necessarily, Your Honor. I

1 mean, it--there'd be a lot that would happen in the interim.
2 The way these claims are processed is that there would be a
3 question about, "So, would you like to tell us what the
4 Assignor is," "Well, we won't tell you," or, "Yes, we will
5 tell you," or "We'll negotiate it and figure out what we can
6 tell--"

7 JUDGE CHAPMAN: I don't want to do it twice.

8 MR. MILLER: But that's not you. You don't--we
9 don't want to do it twice either, Your Honor. I mean, it
10 seems to us like, by the time we present it to the Court,
11 our goal would be to have the Assignor rate and the Assignee
12 rate, because we really need to know both to see whether
13 one's higher than the other. We think it's the Assignor rate
14 that--that's obviously our belief.

15 JUDGE CHAPMAN: So, you know, overruling my prior
16 statement that I wasn't going to get involved in negotiating
17 the language of the order, wouldn't it be wise, then, to
18 have language in the order that specifically makes clear for
19 the avoidance of doubt, that if there has been an assignment
20 with respect to a particular ISDA, that both the Assignor
21 and the Assignee, as sources, and the rates connected
22 therewith, be part of the submission that's subject to the
23 bar order?

24 MR. MILLER: Yes, Your Honor. That would certainly,
25 I think, be helpful. It does beyond what we were asking

1 people to do, but I think that's a good solution to the
2 problem, Your Honor.

3 MR. ANKER: Your Honor, my only--Philip Anker. I
4 only wanted to say that I suspect that my client's case, and
5 I suspect others, they don't know the Assignor's--

6 JUDGE CHAPMAN: Well, I'm going to give you two
7 months to find out.

8 MR. ANKER: Your Honor, we're not--they may provide
9 us information, they may not. We may take different views,
10 but we're happy to say--we're happy to have the order say,
11 to the extent that there is information available to the
12 claimant, with respect to--

13 JUDGE CHAPMAN: Then you're going to have to
14 provide a certification that you can't get it.

15 MR. ANKER: That's fine, Your Honor.

16 MR. MILLER: Your Honor, I think that--I think we
17 believe that that would be a helpful clarification of the
18 order. It responds to the issues that they find--

19 JUDGE CHAPMAN: Okay, so who's ever keeping score
20 on the--with respect to the second decretal paragraph, we're
21 going to identify those parties to whom the April 13th date
22 does not apply, and the date that applies to them. We're
23 going to add some kind of an avoidance of doubt, we're going
24 to add a language to the third decretal paragraph regarding
25 what's required to be submitted with respect to situations

1 involving Assignors and Assignees and the situation in which
2 the Assignor information is purportedly not available
3 requiring a certification from the submitting Assignee that
4 they can't get the information, or to the extent that
5 there's some confidentiality issue, that that's what's
6 preventing the Assignee from providing what's otherwise
7 required. All right?

8 MR. MILLER: Yeah.

9 JUDGE CHAPMAN: Yes.

10 MR. MILLER: I see people are standing--

11 JUDGE CHAPMAN: Okay, let Mr. Miller finish and
12 then I'll--

13 MR. MILLER: Yes, Your Honor.

14 JUDGE CHAPMAN: --be happy to hear from all of you
15 again.

16 MR. MILLER: Just very briefly, Your Honor, we
17 don't believe that any of the changes in the black line
18 should be made other than whatever the Court has just
19 dictated and directed. We don't think any further
20 clarification is necessary at this point. It is, as you say,
21 just a bar date order, and--

22 JUDGE CHAPMAN: It is just a bar date order. I'll
23 say it again. I think--I'm not a huge fan of reservations of
24 rights. Your rights are what they are. Nothing in this order
25 cuts off anybody's substantive rights with respect to any

1 arguments they might make about rates applicable to the
2 Debtor, any litigation positions they might take. It is
3 clear that, to the extent that the plan administrator has
4 questions, there's not going to be the ability simply to,
5 without more, disallow the claims. This process is going to
6 then kick off what I call the sufficiency hearing process,
7 just like every other claim that I've seen in this case.

8 So, to the extent that there should be something
9 in the order that makes clear that that whole procedure is
10 connected to and contemplated by this, I would ask you, Mr.
11 Miller, to put that connecting language in the order.

12 MR. MILLER: All right, Your Honor. We'll certainly
13 do that.

14 JUDGE CHAPMAN: All right.

15 MR. MILLER: I think, Your Honor, that's all I
16 have--

17 JUDGE CHAPMAN: Okay.

18 MR. MILLER: --unless you have some more questions
19 for me.

20 JUDGE CHAPMAN: All right, let's hear what these
21 folks have to say one more time.

22 MR. MILLER: Sure.

23 MR. O'NEAL: I will be brief. We're more than happy
24 to go with the April 13th date and we would like others, as
25 many Creditors as possible to be subject to that.

1 JUDGE CHAPMAN: Okay.

2 MR. O'NEAL: I do want to say one thing, which is
3 that the--our request for disclosure of the aggregate amount
4 of claims is not unprecedented. For example, in the Lehman
5 situation, the original bar date, all of those Proofs of
6 Claims were publicly available. The thing that wasn't
7 publicly available was the questionnaires, and how the
8 Creditors got to their calculation and some of the more
9 specific questions. So, all we're asking for is that there
10 be some kind of disclosure of the aggregate amount of claims
11 that have been asserted.

12 JUDGE CHAPMAN: I'm sorry, maybe I'm confused.
13 Proofs of Claim were uploaded onto the claims agent database
14 and were publicly available, correct?

15 MR. O'NEAL: By third parties, not the hundreds of-
16 -

17 JUDGE CHAPMAN: By third parties.

18 MR. O'NEAL: --not the hundreds of controlled
19 affiliates.

20 JUDGE CHAPMAN: Right, so are the--with respect to
21 these demands, are you talking about the third party demands
22 being publicly available?

23 MR. O'NEAL: No, ma'am. I'm only asking--only
24 suggesting that, if we're going to apply the same rule that
25 we applied with the Lehman Proofs of Claims, the original

1 Proofs of Claims, that the total amount should be available.
2 The total aggregate amount of claims, not the claims
3 themselves, not the actual questionnaires, but the total
4 amount of the claims should be available.

5 JUDGE CHAPMAN: Okay.

6 MR. O'NEAL: So the Creditors have an idea. This is
7 a fish bowl. You know, we are still in a bankruptcy process
8 and--

9 JUDGE CHAPMAN: Right. It is--it is a fish bowl and
10 there is transparency and my point with respect to that,
11 which I'm going to stand by is that, we are not there yet.
12 First we're doing this, we're having a bar date, for the
13 third party claims. As and when we ever get to the point
14 that anybody believes they are aggrieved because of the
15 existence or size of the claims of Debtor affiliates, we can
16 talk about that issue again.

17 MR. O'NEAL: Okay. Thank you, Your Honor.

18 JUDGE CHAPMAN: All right, so Mr. Fail, you've been
19 very diligent at writing everything down. Will you circulate
20 the new version to all of the Objectors? I do not want to
21 hear from you that you don't agree. I do not want competing
22 orders. I trust you're going to be able to agree, based on
23 everything we've talked about on the language, and I'll take
24 a look at it and get it entered quickly, because we have a
25 date that's attached.

1 MR. FAIL: Thank you very much, Your Honor. We
2 will.

3 JUDGE CHAPMAN: All right, Mr. Miller? Anything
4 more from you?

5 MR. MILLER: No, Your Honor. Thank you for your
6 time.

7 JUDGE CHAPMAN: Okay, thank you very much, folks.

8 MR. O'NEAL: Thank you, Your Honor.

9 MR. ANKER: Thanks, Your Honor.

10 (Recess)

11 JUDGE CHAPMAN: Let's give everyone a minute to
12 move around. This was supposed to be my easy.

13 MR. MARGOLIN: I'll try to be brief, Your Honor.

14 JUDGE CHAPMAN: Okay.

15 MR. MARGOLIN: For the record, Jeffrey Margolin,
16 Hughes Hubbard & Reed for Mr. Giddens. As Your Honor
17 identified, we're here on the Trustee's 233rd omnibus
18 objections of claims. This is No Liability claims in
19 particular, the general Creditor claim of RBCCCs, that's
20 Royal Bank of Canada Corporate Employee and Executive
21 Services, totaling approximately \$1.8 million. All other
22 claims subject to this omnibus objection have been
23 disallowed and expunged or otherwise resolved by Your Honor.

24 As to the RBC claim, RBC filed claims against both
25 LBHI and LBI for an apparent obligation of LBH, PLC, an

1 affiliate in a separate UK administration. The LBHI Chapter
2 11 claim was disallowed and expunged by prior Court order.
3 It is clear from the LBI claim and RBC's correspondence to
4 my firm, which are both annexed to the Trustee's reply, that
5 there's no basis for LBI liability. Your Honor, this is a
6 sophisticated party, a subsidiary of Royal Bank of Canada.

7 JUDGE CHAPMAN: Right.

8 MR. MARGOLIN: They had significant time and
9 abundant opportunity to provide additional information to
10 support any claim against LBI. RBC instead has been
11 unresponsive to our inquiries over the past several months.
12 Thereby, Your Honor, for the reasons set forth in the
13 Trustee's papers, unless you have any questions, we
14 respectfully request entry of an order disallowing and
15 expunging this claim.

16 JUDGE CHAPMAN: All right. Is our RBCC here or is
17 anyone present on behalf of RBCC? All right, hearing no
18 response, it's 11:35, the Trustee's objection is granted for
19 the reasons set forth in the Trustee's papers.

20 MR. MARGOLIN: Thank you very much, Your Honor.

21 JUDGE CHAPMAN: Thank you.

22 MR. MARGOLIN: We'll submit an order and the end of
23 the hearing. The next matter is the Trustee's 264th omnibus
24 objection, which is being handled by my colleague, Jim
25 Fitzpatrick.

1 JUDGE CHAPMAN: Okay, thank you very much. Okay,
2 Mr. Fitzpatrick.

3 MR. FITZPATRICK: Good morning, Your Honor.

4 JUDGE CHAPMAN: Good morning.

5 MR. FITZPATRICK: Jim Fitzpatrick, Hughes Hubbard,
6 for the LBI Trustee. Your Honor, I'm sure Your Honor is
7 familiar with the papers, so I won't repeat all of our
8 arguments, but if I could, I would like to just to focus on
9 two specific things. The first is the language of the
10 covenant itself and the relates--that we rely on, which as
11 Your Honor knows, was--it was attached as an Exhibit to the
12 declaration. In 3(b) the covenant--the language of the
13 covenant in 3(b)--

14 JUDGE CHAPMAN: Right.

15 MR. FITZPATRICK: --is a promise to provide
16 irrevocable notice of withdrawal, quote, "of any and all
17 SIPA customer claims and general Creditor Proof of Claims,"
18 so the first point about that, Your Honor, is that it's
19 really just not a possible interpretation of that to mean
20 that some but not others of the claims would be withdrawn.
21 It's very clear that it's any and all, and that really can
22 only mean one thing: to withdraw all of the SIPA customer
23 claims and all of the general Creditor Proof of Claims.

24 The second point about that covenant, Your Honor,
25 is that it is not a broad-reaching, general release, which

1 we readily agree is disfavored. Those are disfavored by New
2 York Courts, no question, those releases that are any
3 claims, past, future, known, unknown, et cetera. This is
4 nothing like that. This is a covenant to withdraw specific
5 claims. There were less than ten of them, it's not a broad
6 universe. They were obviously known, they were filed claims,
7 and so we'd submit that none of the cases which do show,
8 which is correct, that New York disfavors general releases,
9 have any applicability to this covenant, and so--

10 JUDGE CHAPMAN: But what about--but what about, and
11 this was pointed out in the response--

12 MR. FITZPATRICK: Yes, Your Honor.

13 JUDGE CHAPMAN: --on page two, paragraph two, the
14 language in the stipulation, which was attached to Mr. St.
15 Lawrence's declaration, that the parties' rights are
16 reserved with respect to any other claims each may have
17 against the other, other than any claims in respect of or in
18 connection with the transaction. How do I reconcile those
19 two?

20 MR. FITZPATRICK: Yes, yes, Your Honor. That would--
21 --and that was going to be my second point. So first of all,
22 the argument is made that that reservation of rights is a
23 nullity if the covenant is enforced, and as we explained in
24 our reply, it's not a nullity at all. First of all, it
25 obviously reserves any claims that the Trustee--because it's

1 mutual. It certainly reserves any claims the Trustee has
2 against Goldman and any of their defenses. It's also--

3 JUDGE CHAPMAN: It doesn't say that. It says, "any
4 other claims each may have--it might have against the
5 other." Right?

6 MR. FITZPATRICK: No. Yes, and it--absolutely--

7 JUDGE CHAPMAN: Right.

8 MR. FITZPATRICK: --and it also--it also reserves
9 any claims, small c, that Goldman might have against the
10 Trustee, other than the universe, which as I said, was less
11 than ten of the SIPA customer claims and the general
12 Creditor claims. There could be future claims, there could
13 be claims that don't fall into the category of SIPA customer
14 claims or general Creditor claims. So it clearly has
15 meaning, and the reservation of rights, and it's a nullity
16 if the plain language of the covenant is enforced, and in
17 fact, we'd submit, it's not a strained interpretation. It's
18 any claims each might have against the other. If they follow
19 their covenant and withdraw these claims irrevocably, they
20 don't have those claims any more. So it's the cla--this
21 reserves all rights as to the claims, other than, as dealt
22 with in the release, which is a release of the claims of the
23 transactions and the promise to withdraw the filed SIPA
24 customer and general Creditor claims.

25 JUDGE CHAPMAN: So you're saying that, if there's a

1 general release, therefore they'd have no claims, and
2 notwithstanding that, there's a reservation of rights for
3 them to assert other claims, but they don't have any of
4 those.

5 MR. FITZPATRICK: No, Your Honor, no. It's not a
6 general release. The release--the release part of the
7 release, there's no dispute. Only release the transactions.
8 Mutually. It's the covenant to withdraw their claims, any
9 filed customer claims or general Creditor claims. That, they
10 don't have any more, and this reservation of rights doesn't
11 affect. What this reservation of rights does make clear is
12 that, the extent Goldman has any other claims, other than
13 the filed customer and filed general Creditor claims, which
14 they could, they could have future claims, they could have
15 other categories of claims that one could submit in a
16 bankruptcy that aren't customer or general Creditor. Those
17 are all clearly reserved by this reservation of rights, but
18 this reservation of rights can't overcome the very specific,
19 clear covenant to withdraw the, I believe there were nine,
20 claims, that fell into the categories of SIPA customer and
21 general Creditor claims.

22 And of course, I'm happy to answer further
23 questions, Your Honor, but I do--the stipulation was the
24 next place I was going to turn because that, I believe
25 that's the o--that's the question here. Otherwise, the plain

1 language of the covenant, we'd submit it clearly--

2 JUDGE CHAPMAN: Sure, okay.

3 MR. FITZPATRICK: --clearly does, Your Honor.

4 JUDGE CHAPMAN: Okay. All right, thank you.

5 MR. FITZPATRICK: Thank you, Your Honor.

6 MR. BOCCUZZI, JR.: Good morning, Your Honor.

7 JUDGE CHAPMAN: Good morning.

8 MR. BOCCUZZI, JR.: Carmine Boccuzzi, Clearly
9 Gottlieb for Goldman Sachs & Company. The argument that Your
10 Honor just heard is urging on the Court to accept a reading
11 of this contract that misstates the forest for the trees.
12 The tree, exactly, which is the 3(b) covenant that they say,
13 and they really based their entire argument on. New York law
14 is clear, though, Your Honor, that you have to read the
15 contract as a whole, and the contract here is the so-called
16 release agreement, and the stipulation order that came to
17 Your Honor, and you can't accept a reading that renders
18 words, surplusage, or provisions meaningless. And the
19 reading they just presented to you, Your Honor, does exactly
20 that. It both ignores the specific and repeated references
21 to the transactions, which were 13 pages, 670 or so
22 specifically identified, listed out, scheduled transactions
23 attached to this agreement and defined. It has you ignore
24 all that, and it has you ignore the reservation of rights
25 because, make no mistake, read as they're reading it, it

1 becomes meaningless because it's the null set.

2 There's a bar date in this SIPA proceeding,
3 obviously, that's long passed, and so they're asking you to
4 accept their reading, which says, "We reserve all rights,
5 other than," and it's very specific, "in connection with
6 those defined transactions." They're asking you really to
7 ignore that, and that's just not possible under New York
8 law, and if you get to the negotiation history, which we've
9 put in, and which they don't dispute, nothing in the
10 negotiation history supports this odd reading that they're
11 urging on the Court, where you have the withdrawal
12 provision, that covenant, divorced from the specific release
13 in the rest of the agreement that talks about the
14 transactions.

15 Nothing supports that divorce that they're urging,
16 and in fact, everything in the negotiation history,
17 including their statement that this withdrawal covenant was
18 specifically so Goldman would have to withdraw the released
19 claims, that's what paragraph ten says in the same
20 (indiscernible) declaration, because it was a burden for
21 them, that's fine, as a housekeeping matter. So they said,
22 "You send them in and then you deal with it." That was a
23 housekeeping matter.

24 And here, the one other thing they've always
25 harped on in their papers, everybody's sophisticated,

1 everybody's sophisticated. Well, the case law is clear, the
2 ConEd which we cite and the ArcTrade case, where the courts
3 say, it is beyond imagination, logic, reason, everything we
4 think of the law, to think that sophisticated counterparties
5 would give up here, \$9 million dollars in unrelated claims,
6 claims unrelated to the transactions, no one disputes that,
7 without a word of it in the negotiation history, without a
8 mention of it in what the parties actually put in the papers
9 that they signed and they submitted to this Court.

10 And so, if you march through the plain language,
11 and I'd just like to do it briefly--

12 JUDGE CHAPMAN: Okay.

13 MR. BOCCUZZI, JR.: --and in that negotiation
14 history, I don't see how the Court can come out with any
15 other result here than to overrule this objection, which--

16 JUDGE CHAPMAN: But let me--so let me get to,
17 procedurally, what you folks think that I'm doing, because
18 what you're saying is, at a minimum, there's an ambiguity in
19 the documents, and that therefore--otherwise, you wouldn't
20 be telling me about the negotiation history, right? So,
21 first year law school, if the documents are clear, right?

22 MR. BOCCUZZI, JR.: But I think the documents get
23 to our result, and I get confused, as you say, "at a
24 minimum." I would say at worst, for me, there's an ambiguity
25 that requires reference to the parol evidence.

1 JUDGE CHAPMAN: Right.

2 MR. BOCCUZZI, JR.: However--

3 JUDGE CHAPMAN: But that requires a further
4 proceeding.

5 MR. BOCCUZZI, JR.: It could, if Your Honor wants
6 to get to that. I also say, Your Honor, two things. One, I
7 think you could rule for us and should rule for us based on
8 the plain language, which--

9 JUDGE CHAPMAN: Okay, the plain language the other
10 way.

11 MR. BOCCUZZI, JR.: My plain language.

12 JUDGE CHAPMAN: Your language. Right.

13 MR. BOCCUZZI, JR.: Yes, you can rule of me based
14 on the plain language of this agreement--

15 JUDGE CHAPMAN: Right.

16 MR. BOCCUZZI, JR.: --and the fact that their
17 reading produces an illogical result and New York law
18 rejects that--

19 JUDGE CHAPMAN: Right, but just to be clear--

20 MR. BOCCUZZI, JR.: Uh huh?

21 JUDGE CHAPMAN: --their view of the plain language
22 is that there is an opposite conclusion.

23 MR. BOCCUZZI, JR.: Yes, but I--and my view of that
24 is that it produces ambiguity, you therefore need to go to
25 parol evidence, which we've put in--

1 JUDGE CHAPMAN: Right, but this is not--

2 MR. BOCCUZZI, JR.: --and which they don't
3 challenge--

4 JUDGE CHAPMAN: --an evidentiary hearing. That--I'm
5 just trying to be--

6 MR. BOCCUZZI, JR.: Correct.

7 JUDGE CHAPMAN: --correct, procedurally, so this
8 is--

9 MR. BOCCUZZI, JR.: Correct.

10 JUDGE CHAPMAN: --not an evidentiary hearing. So if
11 I can't agree with one or the other of you, solely as a
12 matter of unambiguous words, then we have to go to the next
13 thing.

14 MR. BOCCUZZI, JR.: No. I would say yes, with one
15 caveat, which is, if you look at the parol evidence we've
16 submitted, and I'm not sure if they're going to say today if
17 they dispute that, they've had months to put in their side
18 of it, obviously their side of it is with them, they haven't
19 done that. I think their position in these papers is, they
20 accept our parol evidence, and they just think it comes to
21 an opposite argument, and I would say that, if you read the
22 parol evidence, you could decide as a matter of law, as the
23 ConEd case said, that this parol evidence supports as a
24 matter of law, the interpretation we're urging on Your
25 Honor.

1 JUDGE CHAPMAN: Sure.

2 MR. BOCCUZZI, JR.: Just to be clear--

3 JUDGE CHAPMAN: Right, so--

4 MR. BOCCUZZI, JR.: --I think there's--

5 JUDGE CHAPMAN: --so what you're saying is, and I
6 don't usually do this, that this has become converted into a
7 motion for summary judgment.

8 MR. BOCCUZZI, JR.: Yes. Where they haven't put in
9 anything, I don't think they've said they had anything to
10 put in.

11 JUDGE CHAPMAN: Okay, well, I'll ask, but that's
12 not usually the way these things go. Usually, this is, in
13 essence, a sufficiency hearing--

14 MR. BOCCUZZI, JR.: Right.

15 JUDGE CHAPMAN: --and if I can't say, up or down,
16 based on what I have before me, we then go to a merits
17 hearing, and that's where, I suppose, if you wanted to rely
18 just on what you have, they'd have an opportunity to
19 respond, or I'd have to say whether or not I think we
20 actually need an evidentiary hearing.

21 MR. BOCCUZZI, JR.: Yes.

22 JUDGE CHAPMAN: So--

23 MR. BOCCUZZI, JR.: Right, if Your Honor thinks
24 there are facts for fact finding, we need a hearing, that
25 would be the next step.

1 JUDGE CHAPMAN: All right.

2 MR. BOCCUZZI, JR.: I understand.

3 JUDGE CHAPMAN: Okay. All right. Thank you very
4 much.

5 MR. BOCCUZZI, JR.: So--and in terms of the plain
6 language, it's Exhibit A to the St. Lawrence declaration.

7 JUDGE CHAPMAN: Okay.

8 MR. BOCCUZZI, JR.: That's the stipulation and
9 order with the release agreement--

10 JUDGE CHAPMAN: Let me take a look at that.

11 MR. BOCCUZZI, JR.: --under it.

12 JUDGE CHAPMAN: Sure. Okay?

13 MR. BOCCUZZI, JR.: And so, here we have, right off
14 from the title, the final close out of certain transactions
15 between Lehman Brothers and the Goldman, Sachs entities. So,
16 the parties are agreeing, and you'll see the agreement, in
17 terms of what this agreement was, plays out through as the
18 whereas clauses. They were agreeing that they were resolving
19 and settling the transactions, defined term, and that's
20 defined in the fourth whereas clause. We're talking about
21 the Goldman parties and LBI entered into certain specific
22 transactions, the transactions--these are transactions of a
23 type wholly unrelated to the underwriter indemnity claims
24 that are--they're saying that we need to withdraw. They're
25 agreeing to those, close out those, to take steps in

1 connection and related thereto, and then to sort of--and
2 resolve the matter in that way.

3 And once we go through this, one illogical leap
4 that they're asking you to take, Your Honor, is that in the
5 course of this agreement in which Goldman, Sachs was paying
6 over \$100 million dollars in connection with these
7 specifically scheduled transactions, that we somehow just
8 decided gratuitously, and for no consideration, to give up
9 the unrelated underwriter indemnity claims. And again,
10 nothing in this agreement, which is silent as to those
11 claims, other than to reserve everything unrelated to the
12 transactions, supports that. And nothing in the undisputed
13 parol evidence negotiation history supports that view.

14 So, just reading down the other whereas clauses,
15 there's a reference to the second-to-last on the first page,
16 amounts that were due or were accrued in favor of LBI with
17 respect to the transactions, and then the next one is
18 important, whereas the Trustee and Goldman parties desire to
19 close out the transactions and take certain other actions
20 related thereto, not to resolve unrelated claims. The next
21 whereas talks about the transactions and the closeout
22 amount, which is that total \$103 million dollars, and then
23 the next whereas clause, and I'll just read it, talks about
24 that, "the parties have negotiated in good faith, and
25 reached an agreement dated April 30th, 2014, setting forth

1 the transactions and the rights of the parties with respect
2 to the parties' interest in the transactions."

3 Again, this is what the parties are agreeing to,
4 resolving these transactions, not taking steps unrelated to-
5 -with regards to unrelated transactions or claims between
6 them. And this line of quotes, if you go to paragraph four,
7 which Your Honor pointed counsel out to, this is the
8 reservation of rights. And it's not a reservation of rights
9 that says, "except as provided herein, we reserve--all
10 rights are reserved." It says, specifically, tied back to
11 the transactions. "Each of the parties expressly reserves
12 all of his or its rights and defenses with respect to any
13 other claims each might have against the other, other than
14 any claims in respect of or in connection with the
15 transactions."

16 It doesn't talk about only reserving future claims
17 or non-existent claims or all the caveats they put on it.
18 It's quite a specific and clear reservation of rights
19 saying, "This agreement is about the transactions." And
20 that's what we're doing. It's not about the transaction? We
21 reserved our rights. And it talks about claims, that's what
22 we're talking about, a claim is a Proof of Claim, and they
23 have their defenses to it.

24 So, I think this is critical language. It's not
25 just the reservation of rights, it's all of the references

1 to the transactions, and what it was we were doing, and
2 again, the Consolidated Edison case that Judge Cole decided,
3 the ArcTrade case, they talk about, you've got to read the
4 contract as a whole. What were the parties accomplishing?
5 What were they doing? And all this explains that, and if you
6 turn to the agreement itself, and it's called a Release
7 Agreement, and that should be right after?

8 JUDGE CHAPMAN: Yes.

9 MR. BOCCUZZI, JR.: And again, I just want to draw
10 your attention to the la--it's on page three, unfortunately,
11 the pages aren't numbered, but the top whereas clause, right
12 before the now therefore? This is crystal clear. "Whereas
13 the parties desire to resolve and settle, finally and
14 forever, any and all actual or potential disputes between
15 them, including any and all claims against a party's
16 parents, subsidiaries and affiliates, arising out of or
17 relating in any way to, or in connection with the
18 transactions, in order to avoid the uncertainty, cost and
19 delay of potential litigation." So again, that carries
20 through into this, the release, which is paragraph one,
21 repeats that arising out of a relation to the transactions
22 language.

23 So, now, the fight is about, that all these
24 concepts get ignored if you don't have--because you don't
25 have those few words also in the covenant. And I would

1 argue, Your Honor, that that just doesn't make any sense,
2 because it basically is saying, because the reservation of
3 rights language in paragraph four is not somewhere near the
4 3(b) covenant, that you can ignore it. But I think if they
5 had it--if you just move the language around, the language
6 is in here. The language that gets you to the conclusion
7 that the only Proofs of Claims we're talking about are
8 claims concerning the transaction, is in this document. And
9 the parties agree as part of these documents, that they're
10 all read together as one agreement.

11 So they really are asking, "Well, I guess because
12 it's not on the same page, or it's not in that particular
13 clause," to turn an eye to that reservation of rights, and
14 therefore require us to withdraw these Proofs of Claim that
15 are unrelated to these transactions. And so I think that's
16 why, as a matter of plain language, we should prevail today
17 and the objection should be overruled.

18 But, if you accept their reading, then I think
19 you've got an ambiguity, because you're--because then the
20 Court would be holding, "Okay, you have to withdraw those,
21 and the reservation of rights is the null set. There's
22 nothing there, even though it appears that the parties
23 thought there might be other things, it appears that they
24 were explicit about saying if it's not related to the
25 transactions, I don't have to withdraw it." You have to

1 withdraw it because of this other thing. So that's an
2 ambiguity, and you have to resort to the parol evidence.

3 The parol evidence, they didn't put in anything.
4 We put in the declaration of Paul St. Lawrence, who was the
5 Cleary attorney who was dealing with this and again,
6 starting with the sophisticated party point, it's really--
7 well, actually, let me take a step back. The starting point
8 of these discussions, was them sending to--Hughes Hubbard
9 sending to Cleary Gottlieb, a draft agreement that was
10 specific, specific relief, and s--

11 JUDGE CHAPMAN: So let's not--let's not go into
12 that, because that's having--

13 MR. BOCCUZZI, JR.: Okay.

14 JUDGE CHAPMAN: --(indiscernible) go into the
15 history of the negotiation, so--

16 MR. BOCCUZZI, JR.: Okay.

17 JUDGE CHAPMAN: --let me hear from LBI again,
18 because I think that--I can't reconcile the language. So
19 therefore, the objection to the claim is not going to be
20 granted, and I don't think that I can conflate the
21 sufficiency hearing with the merits hearing, and I think
22 we're going to have to do more on this, because I think some
23 excellent points have been raised. I understand what the--
24 there are words on a page, there are words on another page.
25 I believe that context--you can't read a contract or a

1 provision of a contract out of context, and there's enough
2 here, certainly, to open it up to an inquiry as to the
3 course of dealing between the parties and the negotiation.

4 So, the Trustee's objection is going to be denied,
5 and we have to figure out what we're going to do next. So,
6 you can either put papers in, we could set a trial date, we
7 could agree, see if we can agree on some stipulated facts.
8 If you want to go down the cross motions for summary
9 judgment route, we can do it that way.

10 MR. BOCCUZZI, JR.: Yes, Your Honor.

11 JUDGE CHAPMAN: I don't have a--there's nothing--
12 there's not--there's more than one way that we could go at
13 this point, but we have to go another route.

14 MR. BOCCUZZI, JR.: Yes, Your Honor.

15 JUDGE CHAPMAN: And I don't believe that you--that
16 you're required at this point to put in an evidentiary case
17 in response to what Goldman put in. What Goldman put in has
18 some heft, and I think the Trustee needs to figure out how
19 to respond to it and what we want to do next.

20 MR. FITZPATRICK: Yes, Your Honor, and we're
21 certainly prepared to do that. Maybe the best course would
22 be for the two of us to speak and then we can hopefully
23 submit a procedure to Your Honor that would be agreed.

24 JUDGE CHAPMAN: Right, and if you can't agree, then
25 we can have a status conference and decide how we will

1 proceed. All right?

2 MR. FITZPATRICK: Yes. No, absolutely, Your Honor.

3 MR. BOCCUZZI, JR.: So, Your Honor, I'm sorry, as
4 you started to speak, I was sitting down--

5 JUDGE CHAPMAN: I'm sorry.

6 MR. BOCCUZZI, JR.: I rustled the papers, so I
7 didn't hear what you--the first part of what you said.

8 JUDGE CHAPMAN: I just said I'm--

9 MR. BOCCUZZI, JR.: I think you said the objection
10 is overruled?

11 JUDGE CHAPMAN: The objection is not granted, and
12 we need to have further proceedings.

13 MR. BOCCUZZI, JR.: And we should talk and work out
14 what (indiscernible).

15 JUDGE CHAPMAN: Right, so this is, again, this is a
16 sufficiency hearing. I can't knock the claim out based on
17 this, and we're going to have to go to something else.
18 Whether that's going to be a trial, whether it's going to be
19 cross motions for summary judgment, the two of you want to
20 talk about it, if any further discovery is required, I'm
21 happy to give you additional calendar time as soon as I can
22 see my way clear to that. So I think you should just, as
23 counsel suggests, talk to each other, try to come to an
24 agreement for further proceedings. If you can't, let us know
25 and we can sit down together.

1 MR. BOCCUZZI, JR.: Okay, Your Honor. Thanks.

2 JUDGE CHAPMAN: Okay?

3 MR. FITZPATRICK: Yes, Your Honor, and given that,
4 I assume Your Honor doesn't want to hear a substantive reply
5 to the points that were made which I am happy to do.

6 JUDGE CHAPMAN: I do not.

7 MR. FITZPATRICK: Okay, thank you, Your Honor.

8 JUDGE CHAPMAN: All right? Okay.

9 MR. FITZPATRICK: Thanks, Your Honor.

10 JUDGE CHAPMAN: All right, thank you.

11 (Whereupon these proceedings were concluded at
12 11:55 AM.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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Date: March 12, 2015